

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934  
For the quarterly period ended June 30, 2006.

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES ACT  
OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 001-31303

**Black Hills Corporation**

Incorporated in South Dakota

IRS Identification Number 46-0458824

625 Ninth Street  
Rapid City, South Dakota 57701

Registrant's telephone number (605) 721-1700

Former name, former address, and former fiscal year if changed since last report  
NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date.

Class	Outstanding at July 31, 2006
Common stock, \$1.00 par value	33,258,700 shares

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**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**(unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands, except per share amounts)			
Operating revenues	\$ 153,813	\$ 142,385	\$ 325,704	\$ 284,805
Operating expenses:				
Fuel and purchased power	49,280	41,558	103,409	85,091
Operations and maintenance	22,073	19,947	44,077	37,057
Administrative and general	20,105	18,677	45,056	39,298
Depreciation, depletion and amortization	22,378	20,495	43,266	40,323
Taxes, other than income taxes	7,546	8,557	18,097	16,614
	<u>121,382</u>	<u>109,234</u>	<u>253,905</u>	<u>218,383</u>
Operating income	<u>32,431</u>	<u>33,151</u>	<u>71,799</u>	<u>66,422</u>
Other income (expense):				
Interest expense	(12,910)	(13,472)	(24,910)	(25,332)
Interest income	346	600	1,014	963
Other income, net	123	392	412	680
	<u>(12,441)</u>	<u>(12,480)</u>	<u>(23,484)</u>	<u>(23,689)</u>
Income from continuing operations before equity in earnings of unconsolidated subsidiaries, minority interest and income taxes	19,990	20,671	48,315	42,733
Equity in earnings of unconsolidated subsidiaries	(1,145)	2,879	(632)	4,354
Minority interest	(91)	(65)	(177)	(125)
Income tax expense	(6,386)	(8,170)	(16,577)	(16,393)
Income from continuing operations	12,368	15,315	30,929	30,569
Income (loss) from discontinued operations, net of taxes	(611)	(345)	6,979	141
Net income	11,757	14,970	37,908	30,710
Preferred stock dividends	—	(80)	—	(159)
Net income available for common stock	<u>\$ 11,757</u>	<u>\$ 14,890</u>	<u>\$ 37,908</u>	<u>\$ 30,551</u>
Weighted average common shares outstanding:				
Basic	33,164	32,562	33,142	32,503
Diluted	<u>33,506</u>	<u>33,203</u>	<u>33,493</u>	<u>33,121</u>
Earnings per share:				
Basic—				
Continuing operations	\$ 0.37	\$ 0.47	\$ 0.93	\$ 0.93
Discontinued operations	(0.02)	(0.01)	0.21	0.01
Total	<u>\$ 0.35</u>	<u>\$ 0.46</u>	<u>\$ 1.14</u>	<u>\$ 0.94</u>
Diluted—				
Continuing operations	\$ 0.37	\$ 0.46	\$ 0.92	\$ 0.92
Discontinued operations	(0.02)	(0.01)	0.21	0.01
Total	<u>\$ 0.35</u>	<u>\$ 0.45</u>	<u>\$ 1.13</u>	<u>\$ 0.93</u>
Dividends paid per share of common stock	<u>\$ 0.33</u>	<u>\$ 0.32</u>	<u>\$ 0.66</u>	<u>\$ 0.64</u>

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(unaudited)**

	June 30, 2006	December 31, 2005	June 30, 2005
	(in thousands, except share amounts)		
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 42,234	\$ 31,817	\$ 54,151
Restricted cash	—	—	700
Receivables (net of allowance for doubtful accounts of \$4,077; \$4,685 and \$5,292, respectively)	195,090	264,695	217,947
Materials, supplies and fuel	96,871	122,521	102,618
Derivative assets	29,204	20,681	9,201
Deferred income taxes	—	—	1,766
Other assets	8,353	7,842	7,452
Assets of discontinued operations	6,058	122,158	97,719
	<u>377,810</u>	<u>569,714</u>	<u>491,554</u>
Investments	23,244	27,558	24,253
Property, plant and equipment	2,093,519	1,928,559	1,926,884
Less accumulated depreciation and depletion	(554,167)	(518,525)	(491,134)
	<u>1,539,352</u>	<u>1,410,034</u>	<u>1,435,750</u>
Other assets:			
Derivative assets	3,149	1,898	911
Goodwill	30,563	29,847	28,455
Intangible assets (net of accumulated amortization of \$24,293; \$22,734 and \$22,666, respectively)	25,989	27,548	34,716
Other	40,993	53,646	51,696
	<u>100,694</u>	<u>112,939</u>	<u>115,778</u>
	<u>\$ 2,041,100</u>	<u>\$ 2,120,245</u>	<u>\$ 2,067,335</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 159,207	\$ 202,639	\$ 198,216
Accrued liabilities	66,775	72,514	59,417
Derivative liabilities	14,959	26,141	17,788
Deferred income taxes	1,450	1,443	—
Notes payable	98,500	55,000	13,000
Current maturities of long-term debt	11,125	11,771	11,609
Accrued income taxes	8,311	11,650	16,787
Liabilities of discontinued operations	5,979	92,818	65,600
	<u>366,306</u>	<u>473,976</u>	<u>382,417</u>
Long-term debt, net of current maturities	660,147	670,193	674,860
Deferred credits and other liabilities:			
Deferred income taxes	149,129	134,533	165,034
Derivative liabilities	1,249	2,623	1,977
Other	98,309	95,116	87,475
	<u>248,687</u>	<u>232,272</u>	<u>254,486</u>
Minority interest in subsidiaries	5,103	4,925	4,960
Stockholders' equity:			
Preferred stock – no par Series 2000-A; 0; 0 and 21,500 shares authorized, respectively; 0; 0 and 6,839 issued and outstanding, respectively	—	—	7,167
Common stock equity –			
Common stock \$1 par value; 100,000,000 shares authorized; Issued 33,294,945; 33,222,522 and 32,811,919 shares, respectively	33,295	33,223	32,812
Additional paid-in capital	406,196	404,035	390,433
Retained earnings	327,135	313,217	331,697
Treasury stock at cost – 36,245; 66,938 and 74,330 shares, respectively	(931)	(1,766)	(1,918)
Accumulated other comprehensive loss	(4,838)	(9,830)	(9,579)
	<u>760,857</u>	<u>738,879</u>	<u>743,445</u>
Total stockholders' equity	760,857	738,879	750,612
	<u>\$ 2,041,100</u>	<u>\$ 2,120,245</u>	<u>\$ 2,067,335</u>

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

**BLACK HILLS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS**  
**(unaudited)**

	Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>
	(in thousands)	
<b>Operating activities:</b>		
Income from continuing operations	\$ 30,929	\$ 30,569
Adjustments to reconcile income from continuing operations to net cash provided by operating activities:		
Depreciation, depletion and amortization	43,266	40,321
Net change in derivative assets and liabilities	(3,138)	11,617
Deferred income taxes	11,809	8,937
Distributed (undistributed) earnings in associated companies	4,818	(2,188)
Change in operating assets and liabilities, net of acquisition-		
Materials, supplies and fuel	14,672	(12,347)
Accounts receivable and other current assets	70,079	6,348
Accounts payable and other current liabilities	(77,541)	44,483
Other operating activities	12,417	9,008
Net cash provided by operating activities of continuing operations	107,311	136,748
Net cash (used in) provided by operating activities of discontinued operations	(665)	3,609
Net cash provided by operating activities	106,646	140,357
<b>Investing activities:</b>		
Property, plant and equipment additions	(150,201)	(63,152)
Proceeds from sale of assets	—	103,010
Payment for acquisition, net of cash acquired	—	(67,331)
Other investing activities	(505)	5,099
Net cash used in investing activities of continuing operations	(150,706)	(22,374)
Net cash provided by (used in) investing activities of discontinued operations	43,674	(5,732)
Net cash used in investing activities	(107,032)	(28,106)
<b>Financing activities:</b>		
Dividends paid	(21,959)	(21,022)
Common stock issued	2,233	6,211
Increase (decrease) in short-term borrowings, net	43,500	(11,000)
Long-term debt – repayments	(10,692)	(89,666)
Other financing activities	(5)	(653)
Net cash provided by (used in) financing activities of continuing operations	13,077	(116,130)
Net cash used in financing activities of discontinued operations	—	—
Net cash used in financing activities	13,077	(116,130)
Increase (decrease) in cash and cash equivalents	12,691	(3,879)
<b>Cash and cash equivalents:</b>		
Beginning of period	34,198*	64,507**
End of period	\$ 46,889*	\$ 60,628**
<b>Supplemental disclosure of cash flow information:</b>		
Non-cash investing and financing activities-		
Property, plant and equipment acquired with accrued liabilities	\$ 20,801	\$ —
Cash paid during the period for-		
Interest	\$ 26,095	\$ 25,665
Net income taxes paid (refunded)	\$ 12,514	\$ (1,632)

\*Includes approximately \$4.7 million at June 30, 2006 and \$2.4 million at December 31, 2005 of cash included in discontinued operations.

\*\*Includes approximately \$6.5 million at June 30, 2005 and \$8.6 million at December 31, 2004 of cash included in discontinued operations.

The accompanying notes to condensed consolidated financial statements are an integral part of these condensed consolidated financial statements.

BLACK HILLS CORPORATION

Notes to Condensed Consolidated Financial Statements  
(unaudited)

(Reference is made to Notes to Consolidated Financial Statements included in the Company's 2005 Annual Report on Form 10-K)

(1) MANAGEMENT'S STATEMENT

The financial statements included herein have been prepared by Black Hills Corporation (the Company) without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations; however, the Company believes that the footnotes adequately disclose the information presented. These financial statements should be read in conjunction with the financial statements and the notes thereto, included in the Company's 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission (SEC).

Accounting methods historically employed require certain estimates as of interim dates. The information furnished in the accompanying financial statements reflects all adjustments which are, in the opinion of management, necessary for a fair presentation of the June 30, 2006, December 31, 2005 and June 30, 2005 financial information and are of a normal recurring nature. Some of the Company's operations are highly seasonal and revenues from, and certain expenses for, such operations may fluctuate significantly among quarterly periods. Demand for natural gas is sensitive to seasonal heating and industrial load requirements, as well as changes in market price. The results of operations for the three and six months ended June 30, 2006, are not necessarily indicative of the results to be expected for the full year. All earnings per share amounts discussed refer to diluted earnings per share unless otherwise noted.

(2) RECLASSIFICATIONS

Certain 2005 amounts in the financial statements have been reclassified to conform to the 2006 presentation. These reclassifications did not have an effect on the Company's total stockholders' equity or net income available for common stock as previously reported.

(3) RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

SFAS No. 123 (Revised 2004)

On December 16, 2004, the Financial Accounting Standards Board, or FASB, issued FASB Statement No. 123 (Revised 2004) "Share-Based Payment," or SFAS 123(R), which is a revision of SFAS Statement No. 123, "Accounting for Stock-Based Compensation" (SFAS 123). SFAS 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values.

The Company previously accounted for its employee equity compensation stock option plans under the provisions of APB No. 25 and no stock-based employee compensation cost is reflected in net income for the three and six month periods ended June 30, 2005 for stock options.

As of January 1, 2006, the Company applied the provisions of SFAS 123(R) using the modified prospective method, recognizing compensation expense for all awards granted after the date of adoption and for the unvested portion of previously granted awards that were outstanding at the date of adoption. Adoption of SFAS 123(R) did not have a significant effect on the Company's consolidated financial position, results of operations or cash flows. See Note 9, Common Stock, for further discussion of stock-based compensation plans.

#### EITF Issue No. 04-6

On March 17, 2005, the Emerging Issues Task Force (EITF) issued EITF Issue No. 04-6, "Accounting for Stripping Costs Incurred during Production in the Mining Industry" (EITF 04-6). EITF 04-6 provides that stripping costs incurred during the production phase of a mine are variable production costs that should be included in the costs of the inventory produced during the period that the stripping costs are incurred. EITF 04-6 is effective for the first reporting period in fiscal years beginning after December 15, 2005. Upon adoption of EITF 04-6 on January 1, 2006, the Company recorded a \$2.0 million cumulative effect adjustment to write-off previously recorded deferred charges, with the offset decreasing retained earnings. Additionally, since January 1, 2006, stripping costs are expensed as a cost of inventory produced, at the time incurred.

#### EITF Issue No. 04-13

On September 28, 2005 the FASB ratified the consensus reached under EITF Issue No. 04-13, "Accounting for Purchases and Sales of Inventory with the Same Counterparty," (EITF 04-13) which determines if such transactions should be reported on a gross basis or a net basis.

EITF 04-13 is effective for new arrangements entered into, and modifications or renewals of existing arrangements, in reporting periods beginning after March 16, 2006. The adoption did not have a significant effect on the Company's consolidated financial position, results of operations or cash flows.

#### (4) RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

##### FIN 48

In June, 2006, the FASB issued FASB Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" (FIN 48). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109 "Accounting for Income Taxes" (FAS 109) and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 is effective for fiscal years beginning after December 15, 2006 with the impact of adoption to be reported as a cumulative effect of an accounting change. Management is currently evaluating the impact FIN 48 will have on the Company's consolidated financial statements.

(5) MATERIALS, SUPPLIES AND FUEL

The amounts of materials, supplies and fuel included on the accompanying Condensed Consolidated Balance Sheets, by major classification, are provided as follows (in thousands):

<u>Major Classification</u>	<u>June 30,</u> <u>2006</u>	<u>December 31,</u> <u>2005</u>	<u>June 30,</u> <u>2005</u>
Materials and supplies	\$ 28,077	\$ 24,567	\$ 23,779
Fuel	8,580	7,544	4,081
Gas held by energy marketing*	60,214	90,410	74,758
Total materials, supplies and fuel	<u>\$ 96,871</u>	<u>\$ 122,521</u>	<u>\$ 102,618</u>

\* As of June 30, 2006, December 31, 2005 and June 30, 2005, market adjustments related to natural gas held by energy marketing and recorded in inventory were \$(4.3) million, \$6.6 million and \$2.9 million, respectively.

The gas inventory held by our energy marketing company is held under various contractual storage arrangements. The gas is being held in inventory to capture the price differential between the time at which it was purchased and a sales date in the future. A substantial majority of the gas was economically hedged at the time of purchase either through a fixed price physical or financial forward sale.

(6) LONG-TERM DEBT

On May 24, 2006 the Company entered into an Amended and Restated Credit Agreement for the project financing floating rate debt for Wygen I. The agreement extended the maturity date of the \$111.1 million tranche of the financing from June 2006 to June 2008 to coincide with the maturity date of the remaining \$17.2 million tranche. The cost of borrowings under the financing is determined based upon the Company's corporate credit ratings; at the Company's current levels, the financing has a borrowing spread on Eurodollar loans of 62.5 basis points over LIBOR. In conjunction with the Amended and Restated Credit Agreement, the Company entered into an Amended and Restated Guarantee in favor of Wygen Funding, Limited Partnership, which continues the Company's guarantee obligations under the Wygen I plant lease.



## (7) EARNINGS PER SHARE

Basic earnings per share from continuing operations is computed by dividing income from continuing operations by the weighted-average number of common shares outstanding during the period. Diluted earnings per share from continuing operations gives effect to all dilutive common shares potentially outstanding during a period. A reconciliation of "Income from continuing operations" and basic and diluted share amounts is as follows (in thousands):

<u>Period ended June 30, 2006</u>	<u>Three Months</u>		<u>Six Months</u>	
	<u>Income</u>	<u>Average Shares</u>	<u>Income</u>	<u>Average Shares</u>
Income from continuing operations	\$ 12,368		\$ 30,929	
Basic – available for common shareholders	12,368	33,164	30,929	33,142
Dilutive effect of:				
Stock options	—	79	—	81
Estimated contingent shares issuable for prior acquisition	—	159	—	159
Others	—	104	—	111
Diluted–available for common shareholders	\$ 12,368	33,506	\$ 30,929	33,493

<u>Period ended June 30, 2005</u>	<u>Three Months</u>		<u>Six Months</u>	
	<u>Income</u>	<u>Average Shares</u>	<u>Income</u>	<u>Average Shares</u>
Income from continuing operations	\$ 15,315		\$ 30,569	
Less: preferred stock dividends	(80)		(159)	
Basic – available for common shareholders	15,235	32,562	30,410	32,503
Dilutive effect of:				
Stock options	—	170	—	147
Convertible preferred stock	80	195	159	195
Estimated contingent shares issuable for prior acquisition	—	159	—	159
Others	—	117	—	117
Diluted–available for common shareholders	\$ 15,315	33,203	\$ 30,569	33,121

(8) COMPREHENSIVE INCOME

The following table presents the components of the Company's comprehensive income (loss) (in thousands):

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Net income	\$ 11,757	\$ 14,970	\$ 37,908	\$ 30,710
Other comprehensive income (loss), net of tax:				
Fair value adjustment on derivatives designated as cash flow hedges	1,297	480	5,162	(4,166)
Reclassification adjustments on cash flow hedges settled and included in net income	121	2,035	(170)	2,179
Unrealized gain on available-for-sale securities	—	—	—	15
Comprehensive income	<u>\$ 13,175</u>	<u>\$ 17,485</u>	<u>\$ 42,900</u>	<u>\$ 28,738</u>

(9) COMMON STOCK

**Equity Compensation Plans**

The Company has several employee equity compensation plans, which allow for the granting of stock, restricted stock, restricted stock units, stock options and performance shares. The Company has 1,083,903 shares available to grant at June 30, 2006.

At June 30, 2006, the Company had one stock-based employee compensation plan under which it can grant stock options to its employees and three prior plans with stock options outstanding. Prior to January 1, 2006, the Company accounted for these plans under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees (APB 25)," and related interpretations. Prior to 2006, no stock-based compensation expense related to stock options was reflected in net income as all options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. However, the Company did recognize stock-based compensation expense for non-vested share awards including restricted stock and restricted stock units, performance shares and directors' phantom shares.

The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation (in thousands, except per share amounts):

	Three Months Ended June 30, 2005	Six Months Ended June 30, 2005
Net income available for common stock, as reported	\$ 14,890	\$ 30,551
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(122)	(263)
Pro forma net income available for common stock	<u>\$ 14,768</u>	<u>\$ 30,288</u>
Earnings per share:		
Basic—as reported		
Continuing operations	\$ 0.47	\$ 0.93
Discontinued operations	(0.01)	0.01
Total	<u>\$ 0.46</u>	<u>\$ 0.94</u>
Diluted—as reported		
Continuing operations	\$ 0.46	\$ 0.92
Discontinued operations	(0.01)	0.01
Total	<u>\$ 0.45</u>	<u>\$ 0.93</u>
Basic—pro-forma		
Continuing operations	\$ 0.47	\$ 0.92
Discontinued operations	(0.01)	0.01
Total	<u>\$ 0.46</u>	<u>\$ 0.93</u>
Diluted—pro-forma		
Continuing operations	\$ 0.46	\$ 0.91
Discontinued operations	(0.01)	0.01
Total	<u>\$ 0.45</u>	<u>\$ 0.92</u>

On January 1, 2006 the Company adopted the fair value recognition provisions of SFAS 123(R) requiring the recognition of expense related to the fair value of stock-based compensation awards. The Company elected the modified prospective transition method. Under this method, compensation expense is recognized for all stock-based awards granted prior to, but not yet vested as of January 1, 2006 and all stock-based awards granted subsequent to January 1, 2006. Adoption of SFAS 123(R) did not have a material effect on the Company's consolidated financial position, results of operations or cash flows. Compensation expense is determined using the grant date fair value estimated in accordance with the provisions of SFAS 123(R) and is recognized over the vesting periods of the individual plans. Total stock-based compensation expense for the three months ended June 30, 2006 and 2005 was \$0.9 million (\$0.6 million, after tax) and \$1.1 million (\$0.7 million, after tax), respectively, and for the six months ended June 30, 2006 and 2005 was \$1.7 million (\$1.1 million, after tax) and \$1.9 million (\$1.3 million, after tax), respectively, and is included in administrative and general expense on the accompanying Condensed Consolidated Statements of Income. In accordance with the modified prospective transition method of SFAS 123(R), financial results for prior periods have not been restated. As of June 30, 2006, total unrecognized compensation expense related to stock options and non-vested stock awards is \$4.5 million and is expected to be recognized over a weighted-average period of 2.0 years.

In November 2005, the FASB issued FASB Staff Position (FSP) No. FAS 123 (R)-3, "Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards." FSP 123(R)-3 provides an alternative method of calculating the excess tax benefits available to absorb tax deficiencies recognized subsequent to the adoption of SFAS 123(R). The calculation of excess tax benefits reported as an operating cash outflow and a financing inflow in the Consolidated Statements of Cash Flows required by FSP No. 123(R)-3 differs from that required by SFAS 123(R). The Company has until January 1, 2007 to make a one-time election to adopt the transition method described in FSP No. 123 (R)-3. The Company is currently evaluating FSP No. FAS 123 (R)-3; however, the one-time election is not expected to affect the Company's results of operations.

#### Stock Options

The Company has granted options with an option exercise price equal to the fair market value of the stock on the day of the grant. The options granted vest one-third each year for three years and expire after ten years from the grant date.

A summary of the status of the stock option plans at June 30, 2006 is as follows:

	Shares (in thousands)	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Balance at January 1, 2006	854	\$ 29.56		
Granted	15	33.17		
Forfeited/cancelled	(17)	33.72		
Expired	—	—		
Exercised	(35)	28.30		
Balance at June 30, 2006	817	\$ 29.59	5.8	\$ 3,870
Exercisable at June 30, 2006	716	\$ 29.49	5.4	\$ 3,467

The weighted-average grant-date fair value of options granted during the six months ended June 30, 2006 and 2005 was \$3.79 and \$6.93, respectively. The total intrinsic value of options (the amount by which the market price of the stock on the date of exercise exceeded the exercise price of the option) exercised during the six months ended June 30, 2006 and 2005 was \$0.2 million and \$2.4 million, respectively. The total fair value of shares vested during each of the six months ended June 30, 2006 and 2005 was \$0.4 million and \$0.7 million, respectively.

The fair value of share-based awards is estimated on the date of grant using the Black-Scholes option pricing model. The fair value is affected by the Company's stock price as well as a number of assumptions. The assumptions used to estimate the fair value of share-based awards are as follows:

<u>Valuations Assumptions</u> <sup>1</sup>	Six Months Ended <u>June 30, 2006</u>	Six Months Ended <u>June 30, 2005</u>
Weighted average risk-free interest rate <sup>2</sup>	4.94%	3.90%
Weighted average expected price volatility <sup>3</sup>	21.54%	42.27%
Weighted average expected dividend yield <sup>4</sup>	3.98%	4.17%
Expected life in years <sup>5</sup>	7	7

1 Forfeitures are estimated using historical experience and employee turnover.

2 Based on treasury interest rates with terms consistent with the expected life of the options.

3 Based on a blended historical and implied volatility of the Company's stock price in 2006 and historical volatility only in 2005.

4 Based on the Company's historical and expectation of future dividend payouts and may be subject to substantial change in the future.

5 Based upon historical experience.

Net cash received from the exercise of options for the six months ended June 30, 2006 and 2005 was \$1.0 million and \$4.9 million, respectively. The tax benefit realized from the exercise of shares granted for the six months ended June 30, 2006 and 2005 was \$0.1 million and \$0.9 million, respectively, and was recorded as an increase to equity.

As of June 30, 2006, there was \$0.4 million of unrecognized compensation expense related to stock options that is expected to be recognized over a weighted-average period of 1.1 years.

#### Restricted Stock and Restricted Stock Units

The fair value of restricted stock and restricted stock unit awards equals the market price of the Company's stock on the date of grant.

The shares carry a restriction on the ability to sell the shares until the shares vest. The shares substantially vest one-third per year over three years, contingent on continued employment. Compensation cost related to the awards is recognized over the vesting period.

A summary of the status of the restricted stock and non-vested restricted stock units at June 30, 2006 is as follows:

	Stock And Stock Units (in thousands)	Weighted Average Grant Date Fair Value
Balance at January 1, 2006	90	\$ 30.71
Granted	40	35.18
Vested	(36)	29.14
Forfeited	(2)	31.90
Balance at June 30, 2006	<u>92</u>	<u>\$ 33.24</u>

The weighted-average grant-date fair value of restricted stock and restricted stock units granted in the six months ended June 30, 2006 and 2005 was \$35.18 and \$29.99, per share, respectively. The total fair value of shares vested during the six months ended June 30, 2006 and 2005 was \$1.3 million and \$1.1 million, respectively.

As of June 30, 2006, there was \$2.3 million of unrecognized compensation expense related to non-vested restricted stock and non-vested restricted stock units that is expected to be recognized over a weighted-average period of 2.1 years.

#### Performance Share Plan

Certain officers of the Company and its subsidiaries are participants in a performance share award plan, a market-based plan. Performance shares are awarded based on the Company's total shareholder return over designated performance periods as measured against a selected peer group. In addition, the Company's stock price must also increase during the performance periods.

Participants may earn additional performance shares if the Company's total shareholder return exceeds the 50<sup>th</sup> percentile of the selected peer group. The final value of the performance shares may vary according to the number of shares of common stock that are ultimately granted based upon the performance criteria.

Outstanding Performance Periods at June 30, 2006 are as follows:

Grant Date	Performance Period	Target Grant of Shares (in thousands)
March 1, 2004	March 1, 2004 – December 31, 2006	23
January 1, 2005	January 1, 2005 – December 31, 2007	39
January 1, 2006	January 1, 2006 – December 31, 2008	34

The performance awards are paid 50 percent in cash and 50 percent in common stock. The cash portion accrued is classified as a liability and the stock portion is classified as temporary equity. In the event of a change-in-control performance awards are paid 100 percent in cash. If it is ever determined that a change-in-control is probable, the equity portion will be reclassified as a liability. At June 30, 2006, the Company had \$0.8 million of temporary equity.

A summary of the status of the Performance Share Plan at June 30, 2006 and changes during the six-month period ended June 30, 2006, is as follows:

	<u>Equity Portion</u>		<u>Liability Portion</u>	
	Shares	Weighted-Average Grant Date Fair Value	Shares	Weighted-Average June 30, 2006 Fair Value
	(in thousands)		(in thousands)	
Balance at January 1, 2006	38	\$ 29.95	38	
Granted	17	32.06	17	
Forfeited	(1)	29.95	(1)	
Vested	(6)	29.92	(6)	
Balance at June 30, 2006	48	\$ 30.70	48	\$ 34.35

The weighted-average grant-date fair value of performance share awards granted in the six months ended June 30, 2006 and 2005 was \$32.06 and \$29.97, per share, respectively. The grant date fair value for the performance shares issued in 2006 was determined using a Monte Carlo simulation using a blended volatility of 21 percent comprised of 50 percent historical volatility and 50 percent implied volatility and the average risk-free interest rate of the three-year U.S. Treasury security rate in effect as of the grant date. The grant date fair value for the performance shares issued in 2005 was equal to the market value of the common stock on the grant date.

During the six months ended June 30, 2006, the Company issued 11,677 shares of common stock and paid \$0.4 million for the Performance Period of March 1, 2004 to December 31, 2005, for a total intrinsic value of \$0.8 million. The payout was fully accrued at December 31, 2005.

As of June 30, 2006, there was \$1.7 million of unrecognized compensation expense related to outstanding performance share plans that is expected to be recognized over a weighted-average period of 1.9 years.

#### Other Plans

The Company issued 25,685 shares of common stock with an intrinsic value of \$910,000 in the six months ended June 30, 2006 to certain key employees under the Short-term Annual Incentive Plan, a performance-based plan. The payout was fully accrued at December 31, 2005.

## (10) EMPLOYEE BENEFIT PLANS

Defined Benefit Pension Plan

The Company has two non-contributory defined benefit pension plans (Plans). One Plan covers employees of the Company and the following subsidiaries who meet certain eligibility requirements: Black Hills Service Company, LLC, Black Hills Power, Inc., Wyodak Resources Development Corp., and Black Hills Exploration and Production, Inc. The other Plan covers employees of the Company's subsidiary, Cheyenne Light, Fuel and Power Company, who meet certain eligibility requirements.

The components of net periodic benefit cost for the two Plans are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Service cost	\$ 649	\$ 576	\$ 1,298	\$ 1,152
Interest cost	1,041	995	2,082	1,990
Expected return on plan assets	(1,247)	(1,157)	(2,494)	(2,314)
Amortization of prior service cost	38	54	76	108
Amortization of net loss	227	296	454	592
Net periodic benefit cost	<u>\$ 708</u>	<u>\$ 764</u>	<u>\$ 1,416</u>	<u>\$ 1,528</u>

The Company made a \$1.2 million contribution to the Cheyenne Light Pension Plan in the first quarter of 2006; no additional contributions are anticipated to be made to the Plans during the 2006 fiscal year.

Supplemental Non-qualified Defined Benefit Plans

The Company has various supplemental retirement plans for key executives of the Company (Supplemental Plans). The Supplemental Plans are non-qualified defined benefit plans.

The components of net periodic benefit cost for the Supplemental Plans are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Service cost	\$ 87	\$ 86	\$ 174	\$ 172
Interest cost	270	252	540	504
Amortization of prior service cost	3	2	6	4
Amortization of net loss	199	157	398	314
Net periodic benefit cost	<u>\$ 559</u>	<u>\$ 497</u>	<u>\$ 1,118</u>	<u>\$ 994</u>



The Company anticipates that it will need to make contributions to the Supplemental Plans for the 2006 fiscal year of approximately \$0.7 million. The contributions are expected to be made in the form of benefit payments.

Non-pension Defined Benefit Postretirement Healthcare Plans

Employees who are participants in the Company's Postretirement Healthcare Plans (Healthcare Plans) and who meet certain eligibility requirements are entitled to postretirement healthcare benefits.

The components of net periodic benefit cost for the Healthcare Plans are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Service cost	\$ 164	\$ 185	\$ 328	\$ 370
Interest cost	203	232	406	464
Amortization of net transition obligation	38	37	76	74
Amortization of prior service cost	(6)	(6)	(12)	(12)
Amortization of net loss	—	25	—	50
Net periodic benefit cost	<u>\$ 399</u>	<u>\$ 473</u>	<u>\$ 798</u>	<u>\$ 946</u>

The Company anticipates that it will make contributions to the Healthcare Plans for the 2006 fiscal year of approximately \$0.2 million. The contributions are expected to be made in the form of benefits payments.

It has been determined that the Company's post-65 retiree prescription drug plans are actuarially equivalent and qualify for the Medicare Part D subsidy. The decrease in net periodic postretirement benefit cost due to the subsidy is as follows (in thousands):

	Three Months Ended <u>June 30, 2006</u>	Six Months Ended <u>June 30, 2006</u>
	Service cost	\$ (25)
Interest cost	(28)	(56)
Amortization of net loss	(18)	(36)
Total decrease to net periodic postretirement benefit cost	<u>\$ (71)</u>	<u>\$ (142)</u>

(11) SUMMARY OF INFORMATION RELATING TO SEGMENTS OF THE COMPANY'S BUSINESS

The Company's reportable segments are those that are based on the Company's method of internal reporting, which generally segregates the strategic business groups due to differences in products, services and regulation. As of June 30, 2006, substantially all of the Company's operations and assets are located within the United States. On March 1, 2006, the Company completed the sale of the operating assets of Black Hills Energy Resources, Inc. and related subsidiaries, the Company's crude oil marketing and pipeline transportation business which for segment reporting was classified in the Energy marketing and transportation segment; and on June 30, 2005 the Company completed the sale of its subsidiary, Black Hills FiberSystems, Inc., which operated as the Company's Communications segment (see Note 15). The financial information of the related crude oil marketing and pipeline transportation business and communications segment has been reclassified into Discontinued operations on the accompanying condensed consolidated financial statements.

The Company conducts its operations through the following six reporting segments: Retail Services group consisting of the following segments: Electric utility, which supplies electric utility service to western South Dakota, northeastern Wyoming and southeastern Montana; and Electric and gas utility, acquired January 21, 2005, which supplies electric and gas utility service to Cheyenne, Wyoming and vicinity; and Wholesale Energy group, consisting of the following segments: Coal mining, which engages in the mining and sale of coal from its mine near Gillette, Wyoming; Oil and gas, which produces, explores and operates oil and gas interests located in the Rocky Mountain region, Texas, California, Oklahoma and other states; Energy marketing, which markets natural gas, oil and related services to customers in the Midwest, Southwest, Rocky Mountain, West Coast and Northwest regions; and Power generation, which produces and sells power and capacity to wholesale customers with plants concentrated in Colorado, Nevada, Wyoming and California.

Segment information follows the same accounting policies as described in Note 22 of the Company's 2005 Annual Report on Form 10-K. In accordance with the provisions of SFAS No. 71, "Accounting for the Effects of Certain Types of Regulation" (SFAS 71), intercompany fuel sales to the electric utility are not eliminated.

Segment information included in the accompanying Condensed Consolidated Statements of Income is as follows (in thousands):

	External Operating <u>Revenues</u>	Inter-segment Operating <u>Revenues</u>	Income (Loss) from Continuing <u>Operations</u>
Three Month Period Ended June 30, 2006			
Retail services:			
Electric utility	\$ 46,405	\$ 631	\$ 2,436
Electric and gas utility	29,730	—	864
Wholesale energy:			
Coal mining	3,854	2,913	768
Oil and gas	21,313	—	2,042
Energy marketing	11,624	—	4,553
Power generation	38,697	—	2,379
Corporate	16	—	(674)
Intersegment eliminations	—	(1,370)	—
Total	<u>\$ 151,639</u>	<u>\$ 2,174</u>	<u>\$ 12,368</u>

	External Operating <u>Revenues</u>	Inter-segment Operating <u>Revenues</u>	Income (Loss) from Continuing <u>Operations</u>
Three Month Period Ended June 30, 2005			
Retail services:			
Electric utility	\$ 41,910	\$ 351	\$ 3,409
Electric and gas utility	27,459	—	643
Wholesale energy:			
Coal mining	5,307	3,053	1,728
Oil and gas	19,662	—	4,277
Energy marketing	5,263	—	1,964
Power generation	40,128	—	6,101
Corporate	289	—	(2,807)
Intersegment eliminations	—	(1,037)	—
Total	<u>\$ 140,018</u>	<u>\$ 2,367</u>	<u>\$ 15,315</u>

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (Loss) from Continuing Operations</u>
Six Month Period Ended June 30, 2006			
Retail services:			
Electric utility	\$ 90,209	\$ 795	\$ 7,335
Electric and gas utility	73,428	—	2,261
Wholesale energy:			
Coal mining	9,850	6,188	2,183
Oil and gas	46,550	—	7,432
Energy marketing	28,581	—	10,872
Power generation	72,290	—	4,471
Corporate	32	—	(3,625)
Intersegment eliminations	—	(2,219)	—
Total	<u>\$ 320,940</u>	<u>\$ 4,764</u>	<u>\$ 30,929</u>

	<u>External Operating Revenues</u>	<u>Inter-segment Operating Revenues</u>	<u>Income (Loss) from Continuing Operations</u>
Six Month Period Ended June 30, 2005			
Retail services:			
Electric utility	\$ 84,959	\$ 449	\$ 7,732
Electric and gas utility	54,533	—	1,155
Wholesale energy:			
Coal mining	10,180	6,199	3,216
Oil and gas	38,703	—	9,237
Energy marketing	12,795	—	3,392
Power generation	78,290	—	9,987
Corporate	554	—	(4,150)
Intersegment eliminations	—	(1,857)	—
Total	<u>\$ 280,014</u>	<u>\$ 4,791</u>	<u>\$ 30,569</u>

Other than the sale of the assets of the crude oil marketing and transportation business and its reclassification to Discontinued operations, and the acquisition of certain oil and gas assets in the Piceance Basin in Colorado, the Company had no material changes in the assets of its reporting segments, as reported in Note 22 of the Notes to Consolidated Financial Statements in the Company's 2005 Annual Report on Form 10-K, beyond changes resulting from normal operating activities.

(12) RISK MANAGEMENT ACTIVITIES

The Company actively manages its exposure to certain market risks as described in Note 2 of the Notes to Consolidated Financial Statements in the Company's 2005 Annual Report on Form 10-K. Details of derivative and hedging activities included in the accompanying Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Income are as follows:

**Trading Activities**

Natural Gas and Crude Oil Marketing

The Company's natural gas and crude oil marketing subsidiary, Enserco Energy Inc., recently began marketing crude oil in the Rocky Mountain region out of the Company's Golden, Colorado offices. Our primary strategy involves executing physical crude oil purchase contracts with producers, and reselling into various markets. These transactions are primarily entered into as back-to-back purchases and sales, effectively locking in a marketing fee equal to the difference between the sales price and the purchase price, less transportation costs. Under FAS 133, mark-to-market accounting for the related commodity contracts in the Company's back-to-back strategy results in an acceleration of marketing margins locked in for the term of the contracts. These are generally short-term contracts with automatic renewals (typically monthly) if there is no notice of cancellation. The realized and unrealized gains and losses from the oil marketing activities are shown net on the accompanying Condensed Consolidated Income Statement within "Operating revenues".

The contract or notional amounts and terms of the Company's natural gas and crude oil marketing activities and derivative commodity instruments are as follows:

	<u>June 30, 2006</u>		<u>December 31, 2005</u>		<u>June 30, 2005</u>	
	Notional	Latest	Notional	Latest	Notional	Latest
	<u>Amounts</u>	<u>Expiration</u>	<u>Amounts</u>	<u>Expiration</u>	<u>Amounts</u>	<u>Expiration</u>
		<u>(months)</u>		<u>(months)</u>		<u>(months)</u>
(in thousands of MMBtus)						
Natural gas basis						
swaps purchased	110,281	16	43,507	22	61,431	21
Natural gas basis						
swaps sold	118,342	16	53,665	22	59,426	16
Natural gas fixed-for-float						
swaps purchased	29,537	17	17,083	23	24,532	21
Natural gas fixed-for-float						
swaps sold	40,604	17	24,871	23	25,562	16
Natural gas physical						
purchases	80,193	28	59,855	34	88,729	18
Natural gas physical sales	128,747	40	88,302	46	127,996	53
Natural gas options						
purchased	18,145	18	6,176	21	7,568	27
Natural gas options sold	18,145	18	6,176	21	7,568	27
(in thousands of barrels)						
Crude oil physical						
purchases	1,785	4	—	—	—	—
Crude oil physical sales	1,568	4	—	—	—	—

	<u>June 30, 2006</u>		<u>December 31, 2005</u>		<u>June 30, 2005</u>	
	Notional	Latest	Notional	Latest	Notional	Latest
	<u>Amounts</u>	<u>(months)</u>	<u>Amounts</u>	<u>(months)</u>	<u>Amounts</u>	<u>(months)</u>

(Dollars, in thousands)

Canadian dollars

purchased	\$	18,000	2	\$	88,000	2	\$	4,300	1
Canadian dollars sold	\$	11,000	5	\$	29,000	5	\$	25,700	7

Derivatives and certain natural gas and crude oil marketing activities were marked to fair value on June 30, 2006, December 31, 2005 and June 30, 2005, and the related gains and/or losses recognized in earnings. The amounts included in the accompanying Condensed Consolidated Balance Sheets and Statements of Income are as follows (in thousands):

	Current	Non-current	Current	Non-current	Unrealized
	Derivative	Derivative	Derivative	Derivative	Gain (Loss)
	<u>Assets</u>	<u>Assets</u>	<u>Liabilities</u>	<u>Liabilities</u>	
June 30, 2006	\$ 24,631	\$ 697	\$ 11,673	\$ 70	\$ 13,585
December 31, 2005	\$ 20,326	\$ 1,747	\$ 20,751	\$ 2,086	\$ (764)
June 30, 2005	\$ 8,976	\$ 911	\$ 11,836	\$ 1,024	\$ (2,973)

In addition, certain volumes of natural gas inventory have been designated as the underlying hedged item in a "fair value" hedge transaction. These volumes are stated at market value using published spot industry quotations. Market adjustments are recorded in inventory on the Condensed Consolidated Balance Sheets and the related unrealized gain/loss on the Condensed Consolidated Statements of Income, effectively offsetting the earnings impact of the unrealized gain/loss recognized on the associated derivative asset or liability described above. As of June 30, 2006, December 31, 2005 and June 30, 2005, the market adjustments recorded in inventory were \$(4.3) million, \$6.6 million and \$2.9 million, respectively.

## Activities Other Than Trading

### Oil and Gas Exploration and Production

On June 30, 2006, December 31, 2005 and June 30, 2005, the Company had the following swaps and related balances (in thousands):

	<u>Notional*</u>	<u>Maximum Terms in Years</u>	<u>Current Derivative Assets</u>	<u>Non- current Derivative Assets</u>	<u>Current Derivative Liabilities</u>	<u>Non- current Derivative Liabilities</u>	<u>Pre-tax Accumulated Other Comprehensive Income (Loss)</u>	<u>Pre-tax Income (Loss)</u>
June 30, 2006								
Crude oil swaps/options	360,000	1.00	\$ 302	\$ —	\$ 3,286	\$ 1,179	\$ (4,465)	\$ 302
Natural gas swaps	4,485,000	0.60	3,748	202	—	—	3,950	—
			<u>\$ 4,050</u>	<u>\$ 202</u>	<u>\$ 3,286</u>	<u>\$ 1,179</u>	<u>\$ (515)</u>	<u>\$ 302</u>
December 31, 2005								
Crude oil swaps/options	300,000	1.00	\$ 150	\$ —	\$ 2,535	\$ 307	\$ (2,842)	\$ 150
Natural gas swaps	2,950,000	0.60	—	151	2,560	—	(2,409)	—
			<u>\$ 150</u>	<u>\$ 151</u>	<u>\$ 5,095</u>	<u>\$ 307</u>	<u>\$ (5,251)</u>	<u>\$ 150</u>
June 30, 2005								
Crude oil swaps	240,000	1.00	\$ —	\$ —	\$ 4,417	\$ 873	\$ (5,252)	\$ (38)
Natural gas swaps	1,985,000	0.50	109	—	949	—	(840)	—
			<u>\$ 109</u>	<u>\$ —</u>	<u>\$ 5,366</u>	<u>\$ 873</u>	<u>\$ (6,092)</u>	<u>\$ (38)</u>

\*crude in barrels, gas in MMBtu's

Based on June 30, 2006 market prices, a \$0.2 million gain would be realized and reported in pre-tax earnings during the next twelve months related to hedges of production. Estimated and actual realized losses will likely change during the next twelve months as market prices change.

## Financing Activities

On June 30, 2006, December 31, 2005 and June 30, 2005, the Company's interest rate swaps and related balances were as follows (in thousands):

	Current Notional <u>Amount</u>	Weighted Average Fixed Interest <u>Rate</u>	Maximum Terms in <u>Years</u>	Current Derivative <u>Assets</u>	Non- current Derivative <u>Assets</u>	Current Derivative <u>Liabilities</u>	Non- current Derivative <u>Liabilities</u>	Pre-tax Accumulated Other Comprehensive <u>Income (Loss)</u>	Pre-tax Income <u>(Loss)</u>
June 30, 2006									
Swaps on project and other financings	<u>\$ 75,000</u>	4.93%	9.5	<u>\$ 350</u>	<u>\$ 2,250</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,566</u>	<u>\$ 34</u>
December 31, 2005									
Swaps on project financing	<u>\$ 163,000</u>	4.43%	10	<u>\$ 13</u>	<u>\$ —</u>	<u>\$ 76</u>	<u>\$ 230</u>	<u>\$ (249)</u>	<u>\$ (44)</u>
June 30, 2005									
Swaps on project financing	<u>\$ 113,000</u>	4.22%	1.25	<u>\$ 116</u>	<u>\$ —</u>	<u>\$ 528</u>	<u>\$ 80</u>	<u>\$ (154)</u>	<u>\$ (338)</u>

Based on June 30, 2006 market interest rates and balances, a gain of approximately \$0.4 million would be realized and reported in pre-tax earnings during the next twelve months. Estimated and realized amounts will likely change during the next twelve months as market interest rates change.



(13) LEGAL PROCEEDINGS

The Company is subject to various legal proceedings, claims and litigation as described in Note 20 of the Notes to Consolidated Financial Statements in the Company's 2005 Annual Report on Form 10-K.

**PPM Energy, Inc. Demand for Arbitration**

As disclosed in previous filings with the SEC, the Company's subsidiary, Black Hills Power, Inc. received a Demand for Arbitration from PPM Energy, Inc. (PPM) on January 2, 2004, that alleged claims for breach of contract and requested a declaration of the parties' rights and responsibilities under an Exchange Agreement executed in April of 2001. PPM asserted the Exchange Agreement obligated Black Hills Power to accept receipt and cause corresponding delivery of electric energy, and to grant access to transmission rights allegedly covered by the Agreement. PPM requested an award of damages in an amount not less than \$20.0 million. Black Hills Power filed its Response to Demand, including a counterclaim that sought recovery of sums PPM had refused to pay pursuant to the Exchange Agreement. The dispute was presented to the arbitrator in August 2005 and the arbitrator delivered his decision on June 5, 2006.

The arbitrator concluded both parties failed to perform the Exchange Agreement, in certain respects. Black Hills Power has paid PPM a net settlement of \$1.1 million in accordance with the decision. The Company does not believe that the decision will have a material impact on its ability to market surplus power in the future.

**Price Reporting Class Actions**

As disclosed in Note 20 of the Notes to Consolidated Financial Statements in the Company's 2005 Annual Report on Form 10-K, the Company reached a tentative settlement with the Plaintiffs on October 28, 2005. Approval of the final settlement documents occurred on May 19, 2006 and the litigation is now concluded.

Except as described above, there have been no material developments in any previously reported proceedings or any new material proceedings that have developed or material proceedings that have terminated during the first six months of 2006.

(14) ACQUISITIONS

**Oil and Gas Assets**

On March 17, 2006, the Company acquired certain oil and gas assets of Koch Exploration Company, LLC, for approximately \$51.4 million. The associated acreage position is located in the Piceance Basin in Colorado and includes approximately 40 Bcfe of proved reserves, including approximately 31 Bcfe of proved undeveloped reserves, which are substantially all gas. The acquisition includes 63 producing wells and majority interests in associated midstream and gathering assets. Operations of these assets prior to acquisition were not material to the Company's consolidated operations; therefore no pro-forma information has been presented herein.

## Cheyenne Light, Fuel and Power

On January 21, 2005, the Company completed the acquisition of Cheyenne Light. The Company purchased all the common stock of Cheyenne Light, including the assumption of outstanding debt of approximately \$24.6 million, for approximately \$90.7 million.

This acquisition has been accounted for under the purchase method of accounting, and accordingly, the purchase price has been allocated to the acquired assets and liabilities based on preliminary estimates of the fair values of the assets purchased and liabilities assumed as of the date of acquisition. Allocation of the purchase price as revised for working capital adjustments is as follows (in thousands):

Current assets	\$	18,036
Property, plant and equipment		91,442
Deferred assets		24,282
	\$	<u>133,760</u>
Current liabilities	\$	12,793
Long-term debt		26,388
Deferred tax liabilities		7,888
Long-term liabilities		20,547
	\$	<u>67,616</u>
Net assets	\$	<u>66,144</u>

The results of operations of Cheyenne Light have been included in the accompanying Condensed Consolidated Financial Statements since the acquisition date.

The following pro-forma consolidated results of operations for the Company have been prepared as if the Cheyenne Light acquisition had occurred on January 1, 2005 (in thousands):

		Six Month Period Ended June 30, 2005
Operating revenues	\$	293,983
Income from		
continuing operations		30,748
Net income		30,889
Earnings per share –		
Basic:		
Continuing operations	\$	0.94
Total	\$	0.95
Diluted:		
Continuing operations	\$	0.93
Total	\$	0.93

The above pro-forma information is presented for informational purposes only and is not necessarily indicative of the results of operations that would have been achieved had the acquisition been consummated at that time; nor is it intended to be a projection of future results.

(15) DISCONTINUED OPERATIONS

The Company accounts for its discontinued operations under the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). Accordingly, results of operations and the related charges for discontinued operations have been classified as "Income (loss) from discontinued operations, net of taxes" in the accompanying Condensed Consolidated Statements of Income. Assets and liabilities of the discontinued operations have been reclassified and reflected on the accompanying Condensed Consolidated Balance Sheets as "Assets of discontinued operations" and "Liabilities of discontinued operations." For comparative purposes, all prior periods presented have been restated to reflect the reclassifications on a consistent basis.

**Sale of Crude Oil Marketing and Transportation Assets**

On March 1, 2006, the Company sold the operating assets of Black Hills Energy Resources, Inc. and related subsidiaries, its crude oil marketing and transportation business for approximately \$41 million. Assets sold include the 200-mile Millennium and the 190-mile Kilgore Pipelines, oil marketing contracts and certain other ancillary assets. Following the sale, the Company closed the operations of the Houston, Texas based business. For business segment reporting purposes, Black Hills Energy Resources was included in the Energy marketing and transportation segment.

Revenues and net (loss) income from the discontinued operations were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Operating revenues	\$ 36	\$ 167,058	\$ 171,905	\$ 320,657
Pre-tax (loss) income from discontinued operations (including 2006 severance payments)	\$ (376)	\$ 1,062	\$ (2,218)	\$ 3,347
Pre-tax (loss) gain on sale of assets	(558)	—	13,104	—
Income tax benefit (expense)	323	(337)	(3,907)	(1,124)
Net (loss) income from discontinued operations	\$ (611)	\$ 725	\$ 6,979	\$ 2,223

Losses incurred subsequent to the asset sale resulted from the settlement of certain contract disputes with the purchaser and other costs incurred in closing down the business operations.

Assets and liabilities of the Crude oil marketing and transportation business were as follows (in thousands):

	<u>June 30, 2006</u>	<u>December 31, 2005</u>	<u>June 30, 2005</u>
Current assets	\$ 6,058	\$ 94,697	\$ 71,324
Property, plant and equipment, net	—	25,364	24,265
Other non-current assets	—	2,097	2,130
Current liabilities	(5,122)	(89,750)	(62,532)
Other non-current liabilities	(857)	(3,068)	(3,068)
Net assets	<u>\$ 79</u>	<u>\$ 29,340</u>	<u>\$ 32,119</u>

#### Communications Segment

On June 30, 2005, the Company completed the sale of its Communications business, Black Hills FiberSystems, Inc. to PrairieWave Communications, Inc. Under the purchase and sale agreement, the Company received a cash payment of approximately \$103 million.

Revenues and net loss from the discontinued operations were as follows (in thousands):

	Three Months Ended June 30, <u>2005</u>	Six Months Ended June 30, <u>2005</u>
Operating revenues	\$ 12,211	\$ 21,877
Pre-tax income from discontinued operations	\$ 5,361	\$ 3,978
Pre-tax loss on disposal	(7,235)	(7,235)
Income tax benefit	914	1,410
Net loss from discontinued operations	<u>\$ (960)</u>	<u>\$ (1,847)</u>

#### Sale of Pepperell Plant

On April 8, 2005, the Company sold the 40 megawatt gas-fired Pepperell plant to an unrelated party for a nominal amount plus the assumption of certain obligations. For business segment reporting purposes, the Pepperell plant results were previously included in the Power generation segment.

Net loss from the discontinued operations is as follows (in thousands):

	Three Months Ended June 30, <u>2005</u>	Six Months Ended June 30, <u>2005</u>
Pre-tax loss from discontinued operations	\$ (204)	\$ (329)
Pre-tax loss on disposal	(39)	(39)
Income tax benefit	133	133
Net loss from discontinued operations	<u>\$ (110)</u>	<u>\$ (235)</u>

(16) SUBSEQUENT EVENTS

Credit Agreement

On July 12, 2006 the Company's subsidiary, Black Hills Colorado, LLC, entered into a Second Amended and Restated Credit Agreement to refinance the floating rate project debt for the Valmont and Arapahoe plants in the amount of \$90.0 million. In conjunction with the refinancing, the Company made a payment in the amount of \$21.3 million on the \$111.3 million principal outstanding at June 30, 2006 and expensed \$0.7 million of unamortized deferred finance costs associated with the First Amended and Restated Credit Agreement. In addition, as of July 12, 2006, the Company has guaranteed the payment obligations of Black Hills Colorado, LLC, to the Bank of Nova Scotia, as administrative agent, in the amount of \$30 million. The cost of borrowings under the facility is determined based upon our corporate credit ratings; at our current ratings levels, the facility has a borrowing spread on Eurodollar loans of 87.5 basis points over LIBOR.

Agreements to Acquire Additional Oil and Gas Interests

The Company has signed definitive agreements to acquire from a third party most of the remaining working interests associated with the property acquired in March 2006 from Koch Exploration Company. The acquisition includes approximately 22.4 billion cubic feet equivalent (Bcfe) of proven reserves, of which 17.9 billion cubic feet equivalent are proved undeveloped reserves. Current annual net production from such assets is slightly less than 0.5 Bcfe. As part of the transaction, the Company will also acquire rights to more than 15,000 net acres of undeveloped leasehold adjacent or near existing operations in the Piceance Basin of Colorado. Upon completion, the Company's leasehold position in the Piceance Basin would total approximately 75,000 net acres. The purchase price for the transaction is approximately \$24.1 million. The Company anticipates completion of the acquisition in the third quarter of 2006.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

We are a diversified energy company operating principally in the United States with two major business groups – retail services and wholesale energy. We report our business groups in the following segments:

<b><u>Business Group</u></b>	<b><u>Financial Segment</u></b>
<i>Retail services group</i>	Electric utility Electric and gas utility
<i>Wholesale energy group</i>	Energy marketing Power generation Oil and gas Coal mining

Our retail services group consists of our electric and gas utilities segments. Our electric utility generates, transmits and distributes electricity to an average of approximately 63,500 customers in South Dakota, Wyoming and Montana. Our electric and gas utility, acquired on January 21, 2005, serves approximately 38,700 electric and 32,500 natural gas customers in Cheyenne, Wyoming and vicinity. Our wholesale energy group engages in the production of electric power through ownership of a diversified portfolio of generating plants and the sale of electric power and capacity primarily under long-term contracts; the production of coal, natural gas and crude oil primarily in the Rocky Mountain region; and the marketing of fuel products.

In March 2006, we sold the operating assets of Black Hills Energy Resources, Inc. and related subsidiaries, our crude oil marketing and pipeline transportation business headquartered in Houston, Texas. These activities were previously reported in our Energy marketing and transportation segment. In June 2005, we sold our subsidiary, Black Hills FiberSystems, Inc., previously reported as our Communications segment. In April 2005, we also sold our Pepperell power plant, our last remaining power plant in the eastern region, which was previously reported in our Power generation segment. Prior period results have been reclassified to present the financial information as Discontinued operations.

The following discussion should be read in conjunction with Item 7. – Management's Discussion and Analysis of Financial Condition and Results of Operations – included in our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

## Results of Operations

### Consolidated Results

Revenues and Income (Loss) from continuing operations provided by each business group were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
<u>Revenues</u>				
Retail services	\$ 76,135	\$ 69,369	\$ 163,637	\$ 139,492
Wholesale energy	77,662	72,727	162,035	144,759
Corporate	16	289	32	554
	<u>\$ 153,813</u>	<u>\$ 142,385</u>	<u>\$ 325,704</u>	<u>\$ 284,805</u>
<u>Income/(Loss) from Continuing Operations</u>				
Retail services	\$ 3,300	\$ 4,052	\$ 9,596	\$ 8,887
Wholesale energy	9,742	14,070	24,958	25,832
Corporate	(674)	(2,807)	(3,625)	(4,150)
	<u>\$ 12,368</u>	<u>\$ 15,315</u>	<u>\$ 30,929</u>	<u>\$ 30,569</u>

Discontinued operations in 2006 and 2005 represent the operations of our crude oil marketing and transportation business, sold in March 2006; our Communications segment, Black Hills FiberSystems, Inc., which was sold in June 2005; and our 40 megawatt Pepperell power plant, which was sold in April 2005.

Prior to the reclassification of the financial results of our crude oil marketing and transportation business into discontinued operations, the related revenues and cost of sales were presented on a gross basis. Accordingly, our operating revenues and expenses, as previously presented in the 2005 interim financial statements, are adjusted by the following to reflect crude oil marketing and transportation revenues and cost of sales in discontinued operations (in millions):

	Three month period ended				Total 2005
	March 31, 2005	June 30, 2005	September 30, 2005	December 31, 2005	
Operating revenues	\$ 153.6	\$ 167.1	\$ 224.0	\$ 233.4	\$ 778.1
Cost of sales	\$ 149.3	\$ 163.9	\$ 221.6	\$ 230.4	\$ 765.2

On January 21, 2005, we completed the acquisition of Cheyenne Light, Fuel and Power Company (Cheyenne Light), an electric and natural gas utility serving customers in Cheyenne, Wyoming and vicinity. The results of operations of Cheyenne Light have been included in the accompanying Condensed Consolidated Financial Statements from the date of acquisition.

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Revenues for the three months ended June 30, 2006 increased 8 percent, or \$11.4 million, compared to the same period in 2005. Increased revenues were primarily driven by higher wholesale sales at Black Hills Power, higher rates at Cheyenne Light, higher margins in our energy marketing activities and higher revenues from our oil and gas production, partially offset by lower revenues at our power generation and coal mining businesses due to scheduled and unscheduled plant outages.

Operating expenses increased 11 percent, or \$12.1 million, primarily due to higher fuel and purchased power costs, increased operations and maintenance for scheduled and unscheduled plant outages and increased depletion expense at our oil and gas operations.

Income from continuing operations decreased \$2.9 million due primarily to the following:

- \$1.0 million decrease in Electric utility earnings;
- a \$1.0 million decrease in Coal mining earnings;
- a \$2.2 million decrease in Oil and gas earnings;
- a \$3.7 million decrease in Power generation earnings,

partially offset by the following increases:

- a \$2.6 million increase in Energy marketing earnings; and
- a \$2.1 million decrease in unallocated corporate costs.

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.** Revenues for the six months ended June 30, 2006 increased 14 percent, or \$40.9 million, compared to the same period in 2005. Increased revenues were primarily driven by higher retail and wholesale sales at Black Hills Power, a full six months of activity and higher rates at Cheyenne Light, higher margins in our energy marketing activities and higher revenues from oil and gas production, partially offset by lower revenues at our power generation and coal mining businesses due to scheduled and unscheduled plant outages.

Operating expenses increased 16 percent, or \$35.5 million, primarily due to higher fuel and purchased power costs, increased operations and maintenance for scheduled and unscheduled plant outages and increased lease operating expense and depletion expense at our oil and gas operations.



Income from continuing operations increased \$0.4 million due primarily to the following:

- a \$7.5 million increase in Energy marketing earnings;
- a \$1.1 million increase in Electric and gas utility earnings;
- a \$0.5 million decrease in unallocated corporate costs,

partially offset by the following decreases:

- a \$0.4 million decrease in Electric utility earnings;
- a \$1.0 million decrease in Coal mining earnings;
- a \$1.8 million decrease in Oil and gas earnings; and
- a \$5.5 million decrease in Power generation earnings.

See the following discussion of our business segments under the captions “Retail Services Group” and “Wholesale Energy Group” for more detail on our results of operations.

*The following business group and segment information does not include intercompany eliminations or discontinued operations. Accordingly, 2005 information has been revised as necessary to reclassify information related to operations that were discontinued.*

### **Retail Services Group**

#### Electric Utility

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Revenue	\$ 47,036	\$ 42,261	\$ 91,004	\$ 85,408
Operating expenses	40,545	34,141	74,416	67,793
Operating income	<u>\$ 6,491</u>	<u>\$ 8,120</u>	<u>\$ 16,588</u>	<u>\$ 17,615</u>
Income from continuing operations and net income	<u>\$ 2,436</u>	<u>\$ 3,409</u>	<u>\$ 7,335</u>	<u>\$ 7,732</u>

The following tables provide certain operating statistics for the Electric utility segment:

Electric Revenue  
(in thousands)

Customer Base	Three Months Ended June 30,			Six Months Ended June 30,		
	2006	Percentage Change	2005	2006	Percentage Change	2005
Commercial	\$ 11,892	2%	\$ 11,634	\$ 23,290	1%	\$ 23,065
Residential	8,868	3	8,649	19,556	2	19,207
Industrial	5,187	6	4,910	10,198	4	9,764
Municipal sales	591	6	555	1,111	6	1,048
Total retail sales	26,538	3	25,748	54,155	2	53,084
Contract wholesale	5,920	4	5,672	12,028	3	11,657
Wholesale off-system	10,575	15	9,171	18,809	9	17,284
Total electric sales	43,033	6	40,591	84,992	4	82,025
Other revenue	4,003	140	1,670	6,012	78	3,383
Total revenue	<u>\$ 47,036</u>	<u>11%</u>	<u>\$ 42,261</u>	<u>\$ 91,004</u>	<u>7%</u>	<u>\$ 85,408</u>

Megawatt Hours Sold

Customer Base	Three Months Ended June 30,			Six Months Ended June 30,		
	2006	Percentage Change	2005	2006	Percentage Change	2005
Commercial	158,046	4%	152,644	316,639	2%	310,162
Residential	105,484	3	102,692	247,278	3	240,639
Industrial	108,333	4	103,695	211,360	5	202,093
Municipal sales	7,652	12	6,827	14,711	11	13,290
Total retail sales	379,515	4	365,858	789,988	3	766,184
Contract wholesale	154,694	3	150,659	316,945	2	311,997
Wholesale off-system	268,174	26	212,460	448,337	12	400,074
Total electric sales	<u>802,383</u>	<u>10%</u>	<u>728,977</u>	<u>1,555,270</u>	<u>5%</u>	<u>1,478,255</u>

Resources	Three Months Ended June 30,			Six Months Ended June 30,		
	2006	Percentage Change	2005	2006	Percentage Change	2005
Megawatt-hours generated:						
Coal	366,821	(14)%	426,400	820,954	(5)%	862,300
Gas	11,482	200	3,830	13,693	149	5,500
	<u>378,303</u>	<u>(12)</u>	<u>430,230</u>	<u>834,647</u>	<u>(4)</u>	<u>867,800</u>
Megawatt - hours purchased	464,219	40	331,434	776,506	19	653,105
Total resources	<u>842,522</u>	<u>11%</u>	<u>761,664</u>	<u>1,611,153</u>	<u>6%</u>	<u>1,520,905</u>

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Heating and cooling degree days:				
Actual				
Heating degree days	710	933	3,656	3,923
Cooling degree days	211	148	211	148
Percent of normal				
Heating degree days	71%	94%	85%	91%
Cooling degree days	209%	147%	209%	147%

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Income from continuing operations decreased \$1.0 million primarily due to increased operations and maintenance expense and fuel and purchased power costs, partially offset by increased revenues.

Electric utility revenues increased 11 percent for the three month period ended June 30, 2006, compared to the same period in the prior year. Total retail megawatt-hour sales increased 4 percent compared to the three months ended June 30, 2005. Heating degree days, which is a measure of weather trends, were 24 percent lower and cooling degree days were 43 percent higher, than the same period in the prior year. Wholesale off-system sales increased 15 percent due to a 26 percent increase in megawatt-hours sold partially offset by a 9 percent decrease in average price received.

Electric operating expenses increased 19 percent for the three month period ended June 30, 2006, compared to the same period in the prior year. Fuel and purchased power costs increased 32 percent due to a 10 percent increase in megawatt-hours sold combined with increased cost per megawatt-hour primarily due to the impact of replacing low cost base load power with higher priced alternatives during the 48 day scheduled outage of the Wyodak plant. Operating expense for the three months ended June 30, 2006 was also affected by increased repairs and maintenance expense incurred for the Wyodak Plant maintenance and higher corporate allocations, partially offset by a decrease in power marketing legal costs relative to costs incurred in the second quarter of 2005 (See Notes to Condensed Consolidated Financial Statements, Note 13 Legal Proceedings, for discussion of power marketing legal settlement).

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.** Income from continuing operations decreased 5 percent primarily due to increased operations and maintenance expense and fuel and purchased power costs, partially offset by increased revenues.

Electric utility revenues increased 7 percent for the six month period ended June 30, 2006, compared to the same period in the prior year. Total retail megawatt-hour sales increased 3 percent compared to the six months ended June 30, 2005. Heating degree days, which is a measure of weather trends, were 7 percent lower and cooling degree days were 43 percent higher, than the same period in the prior year. Wholesale off-system sales increased 9 percent due to a 12 percent increase in megawatt-hours sold partially offset by a 3 percent decrease in average price received.

Electric operating expenses increased 10 percent for the six month period ended June 30, 2006, compared to the same period in the prior year. Fuel and purchased power costs increased 17 percent due to a 5 percent increase in megawatt-hours sold combined with increased cost per megawatt-hour primarily due to the impact of replacing low cost base load power with higher priced alternatives during the 48 day scheduled outage of the Wyodak plant. Operating expense for the six months ended June 30, 2006 was also affected by increased repairs and maintenance expense incurred for the Wyodak Plant maintenance and higher corporate allocations, partially offset by a decrease in power marketing legal costs relative to costs incurred in 2005 (See Notes to Condensed Consolidated Financial Statements, Note 13 Legal Proceedings, for discussion of power marketing legal settlement).

**Request for Rate Increase.** On June 30, 2006 our electric utility filed an application with the South Dakota Public Utilities Commission (SDPUC) for an electric rate increase to be effective January 1, 2007. The application requests a 9.5 percent rate increase for all customer classes. In addition, the application proposes annual energy cost adjustments. The proposed cost adjustments would require the electric utility to absorb a portion of power cost increases, depending in part on earnings on certain short-term wholesale sales of electricity. The current rate structure, in place since 1995, does not contain fuel or purchased power adjustment clauses and only provides the ability to request rate relief from energy costs in certain defined situations. We expect these increases, if approved by the SDPUC, would result in an annual revenue increase of approximately \$9.5 million. South Dakota retail customers account for approximately 90 percent of the electric utility's total retail revenues. A rate freeze has been in place for the electric utility since 1995.

Electric and Gas Utility

	Three Months Ended June 30,		Six Months Ended	January 21, 2005 to
	<u>2006</u>	<u>2005</u>	<u>June 30, 2006</u>	<u>June 30, 2005</u>
	(in thousands)			
Revenue	\$ 29,730	\$ 27,459	\$ 73,428	\$ 54,533
Purchased gas and electricity	23,427	21,670	59,603	44,945
Gross margin	6,303	5,789	13,825	9,588
Operating expenses	5,297	4,857	10,919	7,758
Operating income	<u>\$ 1,006</u>	<u>\$ 932</u>	<u>\$ 2,906</u>	<u>\$ 1,830</u>
Income from continuing operations and net income	<u>\$ 864</u>	<u>\$ 643</u>	<u>\$ 2,261</u>	<u>\$ 1,155</u>

The following tables provide certain operating statistics for the Electric and gas utility segment:

Electric Revenue  
(in thousands)

Customer Base	Three Months Ended June 30, 2006	Percentage Change	Three Months Ended June 30, 2005	Six Months Ended June 30, 2006	Percentage Change	January 21, 2005 to June 30, 2005
Commercial	\$ 10,873	7%	\$ 10,159	\$ 21,315	17%	\$ 18,259
Residential	6,417	2	6,290	13,990	18	11,892
Industrial	2,140	(2)	2,180	4,325	(2)	4,405
Municipal sales	201	32	152	404	50	269
Total electric sales	19,631	5	18,781	40,034	15	34,825
Other revenue	131	—	5	224	—	4
Total revenue	<u>\$ 19,762</u>	5%	<u>\$ 18,786</u>	<u>\$ 40,258</u>	16%	<u>\$ 34,829</u>

Resources	Three Months Ended June 30, 2006	Percentage Change	Three Months Ended June 30, 2005	Six Months Ended June 30, 2006	Percentage Change	January 21, 2005 to June 30, 2005
Megawatt-hours purchased	241,034	2%	236,252	487,736	16%	420,572

Gas Revenue  
(in thousands)

Customer Base	Three Months Ended June 30, 2006	Percentage Change	Three Months Ended June 30, 2005	Six Months Ended June 30, 2006	Percentage Change	January 21, 2005 to June 30, 2005
Commercial	\$ 2,920	21%	\$ 2,420	\$ 9,971	71%	\$ 5,819
Residential	5,648	11	5,099	18,544	67	11,120
Industrial	1,144	19	964	4,177	76	2,370
Total gas sales	9,712	14	8,483	32,692	69	19,309
Other revenue	256	35	190	478	21	395
Total revenue	<u>\$ 9,968</u>	15%	<u>\$ 8,673</u>	<u>\$ 33,170</u>	68%	<u>\$ 19,704</u>

Resources	Three Months Ended June 30, 2006	Percentage Change	Three Months Ended June 30, 2005	Six Months Ended June 30, 2006	Percentage Change	January 21, 2005 to June 30, 2005
Dekatherms purchased	706,956	(16)%	842,380	2,507,491	20%	2,092,236

	Three Months Ended June 30, 2006	Percentage Change	Three Months Ended June 30, 2005	Six Months Ended June 30, 2006	Percentage Change	January 21, 2005 to June 30, 2005
Electric sales - MWh	218,795	(4)%	228,685	451,622	8%	417,239
Gas sales - Dth	823,868	(14)%	961,633	2,694,322	14%	2,373,734

	Three Months Ended June 30		Six Months Ended June 30,	January 21, 2005 to June 30,
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Heating and cooling degree days:				
Actual				
Heating degree days	877	1,201	3,868	4,007
Cooling degree days	124	65	124	65
Percent of normal				
Heating degree days	71%	97%	88%	92%
Cooling degree days	295%	155%	295%	155%

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Income from continuing operations increased \$0.2 million for the three months ended June 30, 2006 compared to the three months ended June 30, 2005.

Gross margin increased 9 percent primarily due to an increase in base rates that went into effect January 1, 2006 partially offset by a 4 percent decrease in electric usage and a 14 percent decrease in gas usage. Heating degree days were 27 percent lower, and cooling degree days were 91 percent higher, than the same period in the prior year. We believe gross margin is a better performance measure as fluctuations in cost of gas and electricity flow through to revenues through cost recovery adjustments.

Operating expenses increased 9 percent primarily due to increased general and administrative costs and depreciation expense.

**Six Months Ended June 30, 2006 Compared to the Period January 21, 2005 to June 30, 2005.** Income from continuing operations increased \$1.1 million for the six months ended June 30, 2006 compared to the period January 21 to June 30, 2005.

Gross margin increased 44 percent primarily due to an increase in base rates that went into effect January 1, 2006 and an 8 percent increase in electric usage and a 14 percent increase in gas usage. Heating degree days were 3 percent lower, and cooling degree days were 91 percent higher, than the same period in the prior year. We believe gross margin is a better performance measure as fluctuations in cost of gas and electricity flow through to revenues through cost recovery adjustments.

Operating expenses increased 41 percent due to increased general and administrative costs, depreciation expense and increased operating costs due to a full six months of operations in 2006.

We are progressing with the construction of Wygen II, a 90 megawatt, coal-fired power plant sited at our Wyodak energy complex near Gillette, Wyoming. Wygen II will be a regulated asset of Cheyenne Light. The power plant is expected to be in commercial operation by early 2008 and will require a future rate review with the Wyoming Public Service Commission in order to recover capital and provide a return on invested capital.

## Wholesale Energy Group

A discussion of results from our Wholesale Energy group's operating segments follows:

### Energy Marketing

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Revenue	\$ 11,624	\$ 5,263	\$ 28,581	\$ 12,795
Operating expenses	4,893	2,335	12,048	7,415
Operating income	<u>\$ 6,731</u>	<u>\$ 2,928</u>	<u>\$ 16,533</u>	<u>\$ 5,380</u>
Income from continuing operations	<u>\$ 4,553</u>	<u>\$ 1,964</u>	<u>\$ 10,872</u>	<u>\$ 3,392</u>

The following is a summary of average daily energy marketing volumes:

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Natural gas physical sales – MMbtus	1,504,300	1,562,600	1,390,700	1,460,700
Crude oil physical barrels – barrels(a)	8,945	—	8,945	—

(a) Daily oil volumes are calculated as of May 1, 2006

Our natural gas marketing subsidiary, Enserco Energy Inc., recently began marketing crude oil in the Rocky Mountain region out of our Golden, Colorado offices. Our primary strategy involves executing physical crude oil purchase contracts with producers, and reselling into various markets. These transactions are primarily entered into as back-to-back purchases and sales, effectively locking in a marketing fee equal to the difference between the sales price and the purchase price, less transportation costs. Under FAS 133, mark-to-market accounting for the related commodity contracts in our back-to-back strategy results in an acceleration of marketing margins locked in for the term of the contracts. These are generally short-term contracts with automatic renewals if there is no notice of cancellation. The realized and unrealized gains and losses from the oil marketing activities are shown net within "Operating revenues" on the Condensed Consolidated Statement of Income.

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Income from continuing operations increased \$2.6 million due to increased realized marketing margins, partially offset by a decrease in unrealized marketing gains/losses.

Realized marketing margins increased approximately \$8.6 million over the prior year due to higher average margins received partially offset by a 4 percent decrease in natural gas volumes marketed. Unrealized mark-to-market gains decreased \$2.7 million from unrealized mark-to-market gains for the same period in 2005. (For discussion of potential volatility in energy marketing earnings related to accounting treatment of certain hedging activities at our natural gas and oil marketing operations see "Trading Activities" in Part 1, Item 3 of this Form 10-Q.) Results also reflect earnings from the addition of crude oil marketing to our Rocky Mountain region producer services. Operating expenses increased primarily due to increased compensation cost related to higher realized margins.

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.** Income from continuing operations increased \$7.5 million due to increased realized and unrealized marketing margins.

Realized marketing margins increased approximately \$13.8 million over the prior year primarily due to higher average margins received for gas marketing partially offset by a 5 percent decrease in natural gas volumes sold. Unrealized mark-to-market gains for the six months ended June 30, 2006 were \$1.8 million higher than unrealized mark-to-market gains for the same period in 2005. (For discussion of potential volatility in energy marketing earnings related to accounting treatment of certain hedging activities at our natural gas and oil marketing operations see "Trading Activities" in Part 1, Item 3 of this Form 10-Q.) Results also reflect earnings from the addition of crude oil marketing to our Rocky Mountain region producer services. Operating expenses increased primarily due to increased compensation cost related to higher realized margins and an increase in bad debt accruals.

#### Power Generation

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Revenue	\$ 38,697	\$ 40,128	\$ 72,290	\$ 78,290
Operating expenses	24,858	25,822	48,897	52,216
Operating income	<u>\$ 13,839</u>	<u>\$ 14,306</u>	<u>\$ 23,393</u>	<u>\$ 26,074</u>
Income from continuing operations	<u>\$ 2,379</u>	<u>\$ 6,101</u>	<u>\$ 4,471</u>	<u>\$ 9,987</u>
			June 30,	<u>2005</u>
Independent power capacity:			<u>2006</u>	
MWs of independent power capacity			1,000	964



	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Contracted fleet plant availability	89.0%	98.1%	87.4%	98.7%

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Income from continuing operations decreased 61 percent due to decreased revenues, lower earnings from certain power fund investments and increased interest expense, partially offset by decreases in operating expense. Revenues in the second quarter of 2006 decreased 4 percent compared to revenues in the second quarter of 2005. Lower revenues are primarily due to scheduled and unscheduled outages for repair and maintenance at the Las Vegas I and II facilities.

Operating expense for the three months ended June 30, 2006, decreased 4 percent from the same period in the prior year. The decrease in operating expenses resulted from lower variable operating costs at the Las Vegas facilities during the plant outages, partially offset by the associated repair and maintenance costs. Las Vegas I returned to operation on April 22, 2006, while the two Las Vegas II heat recovery units returned to service on June 13, 2006 and July 4, 2006.

Income from continuing operations was also affected by lower earnings from certain power fund investments and increased interest expense due to changes in the corporate interest allocations. Earnings from power fund investments decreased \$2.6 million after-tax due to the particularly strong fund earnings in 2005 and diminished earnings potential related to the ongoing liquidation of the funds.

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.** Income from continuing operations decreased 55 percent due to decreased revenues, lower earnings from certain power fund investments and increased interest expense, partially offset by decreases in operating expense. Revenues in the six months ended June 30, 2006 decreased 8 percent compared to revenues in the same period of 2005. Lower revenues are primarily due to scheduled and unscheduled outages for repair and maintenance at the Las Vegas I and II facilities, partially offset by higher capacity revenue at the Harbor facility due to a three-year, year-round tolling agreement, which commenced April 1, 2005 and replaced a seasonal contract.

Operating expense for the six months ended June 30, 2006, decreased 6 percent from the same period in the prior year. The decrease in operating expenses resulted from lower variable operating costs at the Las Vegas facilities during the plant outages, partially offset by the associated repair and maintenance costs. Las Vegas I returned to operation on April 22, 2006, while the two Las Vegas II heat recovery units returned to service on June 13, 2006 and July 4, 2006.

Income from continuing operations was also affected by lower earnings from certain power fund investments and increased interest expense due to changes in the corporate interest allocations. Earnings from power fund investments decreased \$2.9 million after-tax due to the particularly strong fund earnings in 2005 and diminished earnings potential related to the ongoing liquidation of the funds.

Oil and Gas

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Revenue	\$ 21,313	\$ 19,662	\$ 46,550	\$ 38,703
Operating expenses	16,271	12,490	32,224	23,908
Operating income	<u>\$ 5,042</u>	<u>\$ 7,172</u>	<u>\$ 14,326</u>	<u>\$ 14,795</u>
Income from continuing operations	<u>\$ 2,042</u>	<u>\$ 4,277</u>	<u>\$ 7,432</u>	<u>\$ 9,237</u>

The following is a summary of oil and natural gas statistics:

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Fuel production:				
Barrels of oil sold	96,300	104,600	186,800	200,400
Mcf of natural gas sold	3,088,500	2,816,000	6,047,600	5,705,800
Mcf equivalent sales	3,666,300	3,443,600	7,168,400	6,908,200

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
Average price received*:				
Gas/Mcf**	\$ 5.19	\$ 5.58	\$ 6.07	\$ 5.47
Oil/bbl	\$ 48.40	\$ 32.87	\$ 46.91	\$ 32.80
Lease operating expenses/Mcfe	\$ 1.18	\$ 1.03	\$ 1.19	\$ 0.92
Depletion expense/Mcfe	\$ 1.77	\$ 1.17	\$ 1.70	\$ 1.08

\* Net of hedges

\*\* Exclusive of gas liquids

Location detail of our proven reserves as of December 31, 2005, not reflecting 2006 drilling activity, acquisitions or price changes, is as follows:

	<u>Total</u>	<u>San Juan Basin New Mexico and Colorado</u>	<u>Powder River Basin Wyoming</u>	<u>Piceance Basin Colorado</u>	<u>All Other</u>
Proved developed (Mmcf)	109,123	58,528	33,935	2,070	14,590
Proved undeveloped(Mmcf)	60,460	43,953	10,612	2,278	3,617
<b>Total</b>	<b>169,583</b>	<b>102,481</b>	<b>44,547</b>	<b>4,348</b>	<b>18,207</b>

Reserves reflect year end pricing of:

December 31, 2005 gas prices:

Year-end prices NYMEX	\$	11.23								
Year-end prices wellhead	\$	9.06	\$	9.36	\$	8.26	\$	8.87	\$	8.79

December 31, 2005 oil prices:

Year-end prices NYMEX	\$	61.04								
Year-end prices wellhead	\$	58.52	\$	54.27	\$	58.61	\$	-	\$	57.99

**Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.** Income from continuing operations decreased 52 percent in the three months ended June 30, 2006 compared to the same period in 2005 due to increased production expenses and increased interest expense, due to higher borrowings to fund acquisition and development costs, offset by an increase in revenues.

Revenue increased 8 percent for the three months ended June 30, 2006 compared to the three months ended June 30, 2005. A 10 percent increase in gas production was partially offset by a 7 percent decrease in average gas price received. An 8 percent decrease in oil production is primarily due to an increase in the federal royalty on qualified stripper wells, which began on February 1, 2006 and in effect reduces our net share of production, partially offset by a 47 percent increase in average oil price received.

Total operating expenses increased 30 percent for the three month period ended June 30, 2006 primarily due to generally higher field service costs experienced industry-wide and the increase in number of producing wells as a result of the current drilling program. The lease operating expenses per Mcfe sold (LOE/MCFE) increased 15 percent primarily as a result of higher industry costs, possessory taxes and the East Blanco amine plant start up costs. Depletion expense per Mcfe increased 51 percent. The average depletion rate per Mcfe is a function of capitalized costs, projected future development costs and the related underlying reserves in the periods presented. The increased depletion rate is due to increases in current year finding costs and higher estimated future development costs as well as the addition of higher average cost of recently acquired reserves.

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.** Income from continuing operations decreased 20 percent in the six months ended June 30, 2006 compared to the same period in 2005 due to increased production expenses and increased interest expense, due to higher borrowings to fund acquisition and development costs offset by an increase in revenues.

Revenue increased 20 percent for the six months ended June 30, 2006 compared to the six months ended June 30, 2005. Gas production increased 6 percent and average gas price received increased 11 percent. A 7 percent decrease in oil production is primarily due to an increase in the federal royalty on qualified stripper wells, which began on February 1, 2006 and in effect reduces our net share of production, partially offset by a 43 percent increase in average oil price received.

Total operating expenses increased 35 percent for the six month period ended June 30, 2006 primarily due to generally higher field service costs experienced industry-wide and the increase in number of producing wells as a result of the current drilling program. The lease operating expenses per Mcfe sold (LOE/MCFE) increased 29 percent primarily as a result of higher industry costs, possessory taxes and the East Blanco amine plant start up costs. Depletion expense per Mcfe increased 57 percent. The average depletion rate per Mcfe is a function of capitalized costs, projected future development costs and the related underlying reserves in the periods presented. The increased rate is due to increases in current year finding costs and higher estimated future development costs as well as the addition of higher average cost of recently acquired reserves.

On March 17, 2006, we acquired certain oil and gas assets of Koch Exploration Company, LLC. The assets include approximately 40 Bcfe of proved reserves, including approximately 31 Bcfe of proved undeveloped reserves which are substantially all gas, and associated midstream and gathering assets. The associated acreage position is located in the Piceance Basin in Colorado.

#### Coal Mining

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Revenue	\$ 6,767	\$ 8,360	\$ 16,038	\$ 16,379
Operating expenses	6,156	6,330	13,812	12,577
Operating income	<u>\$ 611</u>	<u>\$ 2,030</u>	<u>\$ 2,226</u>	<u>\$ 3,802</u>
Income from continuing operations	<u>\$ 768</u>	<u>\$ 1,728</u>	<u>\$ 2,183</u>	<u>\$ 3,216</u>

The following is a summary of coal sales quantities:

	Three Months Ended June 30,		Six Months Ended June 30,	
	<u>2006</u>	<u>2005</u>	<u>2006</u>	<u>2005</u>
	(in thousands)			
Fuel production:				
Tons of coal sold	1,012	1,148	2,234	2,302

#### **Three Months Ended June 30, 2006 Compared to Three Months Ended June 30, 2005.**

Income from continuing operations from our Coal mining segment decreased 56 percent. Revenue decreased 19 percent for the three month period ended June 30, 2006 compared to the same period in 2005 due to a 12 percent decrease in tons of coal sold. Coal production decreased primarily due to scheduled and unscheduled plant outages, partially offset by increased train load-out sales. Operating expenses decreased 3 percent during the three months ended June 30, 2006 primarily due to decreased coal taxes resulting from the lower revenues and a federal black lung tax credit resulting from the determination of the presence of lignite within the coal seam, partially offset by increased overburden expense, resulting from a change in accounting rules requiring overburden removal to be expensed as incurred.

**Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005.**

Income from continuing operations from our Coal mining segment decreased 32 percent. Revenue decreased 2 percent for the six month period ended June 30, 2006 compared to the same period in 2005 due to a 3 percent decrease in tons of coal sold. Coal production decreased primarily due to scheduled and unscheduled plant outages, partially offset by increased train load-out sales. Operating expenses increased 10 percent during the six months ended June 30, 2006 primarily due to increased overburden expense, resulting from a change in accounting rules requiring overburden removal to be expensed as incurred and higher fuel and tire costs partially offset by decreased coal taxes.

Corporate

Decreased costs in the three and six months ended June 30, 2006, compared to the same periods in 2005, are primarily the result of the sale of certain development projects as compared to the write-off to expense of 2005 project development costs, increased allocation of corporate costs down to the subsidiary level and the allocation of certain interest costs to the power generation segment.

**Critical Accounting Policies**

On January 1, 2006, we adopted the provisions of SFAS 123(R), as detailed in Note 9 of the Notes to Condensed Consolidated Financial Statements included herein. The primary change resulting from adoption was the required recognition of compensation expense for stock options issued. Compensation expense for stock options was approximately \$0.1 million and \$0.3 million for the three and six month periods ended June 30, 2006. The adoption did not have a significant effect on how we recognize compensation expense for our other forms of stock-based compensation.

Other than noted above, there have been no other material changes in our critical accounting policies from those reported in our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission. For more information on our critical accounting policies, see Part II, Item 7 of our 2005 Annual Report on Form 10-K.

## Liquidity and Capital Resources

### Cash Flow Activities

During the six month period ended June 30, 2006, we generated sufficient cash flow from operations to meet our operating needs, to pay dividends on our common stock, to pay our long-term debt maturities, and to fund a portion of our property, plant and equipment additions. We plan to fund future property and investment additions primarily through a combination of operating cash flow and increased short-term and long-term debt.

Cash flows from operations decreased \$33.7 million for the six-month period ended June 30, 2006 compared to the same period in the prior year as a \$0.4 million increase in income from continuing operations was more than offset by the following:

- A \$31.3 million decrease from cash flows from working capital changes. This decrease resulted from cash outflows from changes in net accounts receivable and accounts payable partially offset by a \$27.0 million increase in cash flows from sales or purchases of materials, supplies and fuel. This is primarily related to natural gas held in storage by our natural gas and crude oil marketing business which fluctuates based on economic decisions reflecting current market conditions.
- A \$14.8 million decrease in cash flows from the net change in derivative assets and liabilities, primarily from derivatives associated with normal operations of our gas and oil marketing business and related commodity price fluctuations.

During the six months ended June 30, 2006, we had cash outflows from investing activities of \$107.0 million, which was primarily due to the following:

- Cash outflows of \$150.2 million from property, plant and equipment additions. These outflows include approximately \$51.4 million for the acquisition of oil and gas assets from Koch Exploration Company LLC, and approximately \$45.1 million related to the construction of our Wygen II plant.
- Cash inflows of approximately \$40.7 million resulting from the sale of our crude oil marketing and transportation assets.

During the six months ended June 30, 2006, we had cash flows from financing activities of \$13.1 million, primarily due to increased borrowings on our credit facility, partially offset by the payment of cash dividends on common stock and the payment of long-term debt maturities.

### Dividends

Dividends paid on our common stock totaled \$22.0 million during the six months ended June 30, 2006, or \$0.66 per share. This reflects a 3.0 percent increase, as approved by our board of directors in January 2006, from the 2005 dividend level. The determination of the amount of future cash dividends, if any, to be declared and paid will depend upon, among other things, our financial condition, funds from operations, the level of our capital expenditures, restrictions under our credit facility and our future business prospects.

## Short-Term Liquidity and Financing Transactions

Our principal sources of short-term liquidity are our revolving bank facility and cash provided by operations. Our liquidity position remained strong during the first six months of 2006. As of June 30, 2006, we had approximately \$42.2 million of cash unrestricted for operations. Approximately \$8.1 million of the cash balance at June 30, 2006 was restricted by subsidiary debt agreements that limit our subsidiaries' ability to dividend cash to the parent company.

The \$400 million revolving bank facility has a five year term, expiring May 4, 2010. The facility contains a provision which allows the facility size to be increased by up to an additional \$100 million through the addition of new lenders, or through increased commitments from existing lenders, but only with the consent of such lenders. The cost of borrowings or letters of credit issued under the new facility is determined based on our credit ratings. At our current ratings levels, the facility has an annual facility fee of 17.5 basis points, and has a borrowing spread of 70.0 basis points over LIBOR (which equates to a 6.03 percent one-month borrowing rate as of June 30, 2006).

Our revolving credit facility can be used to fund our working capital needs and for general corporate purposes. At June 30, 2006, we had \$98.5 million of borrowings and \$56.7 million of letters of credit issued on our revolving credit facility with a remaining borrowing capacity of \$244.8 million available.

The bank facility includes customary affirmative and negative covenants, such as limitations on the creation of new indebtedness and on certain liens, restrictions on certain transactions and maintenance of the following financial covenants:

- a consolidated net worth in an amount of not less than the sum of \$625 million and 50 percent of our aggregate consolidated net income beginning January 1, 2005;
- a recourse leverage ratio not to exceed 0.65 to 1.00; and
- an interest expense coverage ratio of not less than 2.5 to 1.0.

If these covenants are violated, it would be considered an event of default entitling the lender to terminate the remaining commitment and accelerate all principal and interest outstanding.

A default under the bank facility may be triggered by events such as a failure to comply with financial covenants or certain other covenants under the bank facility, a failure to make payments when due or a failure to make payments when due in respect of, or a failure to perform obligations relating to, other debt obligations of \$20 million or more. A default under the bank facility would permit the participating banks to restrict the Company's ability to further access the credit facility for loans or new letters of credit, require the immediate repayment of any outstanding loans with interest and require the cash collateralization of outstanding letter of credit obligations.

The bank facility prohibits the Company from paying cash dividends unless no default or no event of default exists prior to, or would result, after giving effect to such action.

Our consolidated net worth was \$760.9 million at June 30, 2006, which was approximately \$100.2 million in excess of the net worth we were required to maintain under the bank facility. Our long-term debt ratio at June 30, 2006 was 46.5 percent, our total debt leverage (long-term debt and short-term debt) was 50.3 percent, and our recourse leverage ratio was approximately 49.2 percent.

On May 24, 2006 the Company entered into an Amended and Restated Credit Agreement for the project financing floating rate debt for Wygen I. The agreement extended the maturity date of the \$111.1 million tranche of the financing from June 2006 to June 2008 to coincide with the maturity date of the remaining \$17.2 million tranche.

In addition, Enserco Energy Inc., our energy marketing unit, entered into a Second Amended and Restated Credit Agreement on June 1, 2006 for a \$260 million uncommitted, discretionary line of credit to provide support for the purchase and sale of natural gas and crude oil. The line of credit is secured by all of Enserco's assets and expires on May 11, 2007. At June 30, 2006, there were outstanding letters of credit issued under the facility of \$121.5 million, with no borrowing balances outstanding on the facility.

Our corporate credit rating by Moody's Investors Service remained unchanged at "Baa3" during the first six months of 2006; the outlook is stable. On May 1, 2006, Standard & Poor's Ratings Services affirmed its "BBB-" corporate credit rating on Black Hills Corporation and removed the rating from CreditWatch with negative implications; the outlook is negative.

Our ability to obtain additional financing, if necessary, will depend upon a number of factors, including our future performance and financial results, and capital market conditions. We can provide no assurance that we will be able to raise additional capital on reasonable terms or at all.

There have been no other material changes in our forecasted liquidity requirements from those reported in Item 7 of our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission.

### **Guarantees**

During the six months ended June 30, 2006 the Company had the following changes to its guarantees:

- Issued a Guarantee for payment under various transactions by Cheyenne Light with Tenaska Marketing Ventures for \$2.0 million, expiring in 2006.
- Issued an Amended and Restated Guarantee in favor of Wygen Funding, Limited Partnership, which continues the Company's guarantee obligations under the Wygen I plant lease.
- Extinguished a guarantee of up to \$3.0 million of Enserco Energy Inc.'s obligations to Fortis Capital Corp. and other lenders under its credit facility.

At June 30, 2006, we had guarantees totaling \$158.5 million in place.

In addition, as of July 12, 2006, the Company has guaranteed \$30 million of the payment obligations for the Valmont and Arapahoe project financing floating rate debt of Black Hills Colorado, LLC, to the Bank of Nova Scotia, as administrative agent.



## **Capital Requirements**

During the six months ended June 30, 2006, capital expenditures, including \$20.8 million of accrued liabilities were approximately \$171.0 million for property, plant and equipment additions. We currently expect capital expenditures for the entire year 2006 to approximate \$302.2 million. This amount does not include the acquisition and future development costs of oil and gas properties acquired in August 2006.

We continue to actively evaluate potential future acquisitions and other growth opportunities in accordance with our disclosed business strategy. We are not obligated to a project until a definitive agreement is entered into and cannot guarantee we will be successful on any potential projects. Future projects are dependent upon the availability of economic opportunities and, as a result, actual expenditures may vary significantly from forecasted estimates.

## **New Accounting Pronouncements**

Other than the new pronouncements reported in our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission and those discussed in Notes 3 and 4 of the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q, there have been no new accounting pronouncements issued that when implemented would require us to either retroactively restate prior period financial statements or record a cumulative catch-up adjustment.

## SAFE HARBOR FOR FORWARD-LOOKING INFORMATION

This Quarterly Report on Form 10-Q includes “forward-looking statements” as defined by the Securities and Exchange Commission, or SEC. We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical facts, included in this Form 10-Q that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. These forward-looking statements are based on assumptions which we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties that, among other things, could cause actual results to differ materially from those contained in the forward-looking statements, including the risk factors described in Item 1A. of Part I of our 2005 Annual Report on Form 10-K and in Item 1A. of Part II of this Quarterly Report on Form 10-Q filed with the SEC, and the following:

- Obtaining adequate cost recovery for our retail operations through regulatory proceedings;
- The amount and timing of capital deployment in new investment opportunities or for the repurchase of debt or stock;
- The completion of acquisitions or divestitures for which definitive agreements have been executed could be delayed or may not occur or may not receive regulatory approval if required;
- The volumes of production from our oil and gas development properties, which may be dependent upon issuance by federal, state, and tribal governments, or agencies thereof, of drilling, environmental and other permits, and the availability of specialized contractors, work force, and equipment;
- The extent of our success in connecting natural gas supplies to gathering, processing and pipeline systems;
- The timing and extent of scheduled and unscheduled outages of power generation facilities;
- Our ability to successfully integrate and profitably operate any future acquisitions;
- Unfavorable rulings in the periodic applications to recover costs for fuel and purchased power in our regulated utilities;
- The possibility that we may be required to take impairment charges to reduce the carrying value of some of our long-lived assets when indicators of impairment emerge;
- Numerous uncertainties inherent in estimating quantities of proved oil and gas reserves and actual future production rates and associated costs;
- Changes in business and financial reporting practices arising from the repeal of the Public Utility Holding Company Act of 1935 and other provisions of the recently enacted Energy Policy Act of 2005;
- Our ability to remedy any deficiencies that may be identified in the review of our internal controls;
- The timing and extent of changes in energy-related and commodity prices, interest rates, energy and commodity supply or volume, the cost and availability of transportation of commodities, and demand for our services, all of which can affect our earnings, liquidity position and the underlying value of our assets;
- General economic and political conditions, including tax rates or policies and inflation rates;
- Our effective use of derivative financial instruments to hedge commodity, currency exchange rate and interest rate risks;
- The creditworthiness of counterparties to trading and other transactions, and defaults on amounts due from counterparties;
- The amount of collateral required to be posted from time to time in our transactions;
- Changes in or compliance with laws and regulations, particularly those relating to taxation, safety and protection of the environment;

- Changes in state laws or regulations that could cause us to curtail our independent power production;
- Weather and other natural phenomena;
- Industry and market changes, including the impact of consolidations and changes in competition;
- The effect of accounting policies issued periodically by accounting standard-setting bodies;
- The cost and effects on our business, including insurance, resulting from terrorist actions or natural disasters and responses to such actions or events;
- The outcome of any ongoing or future litigation or similar disputes and the impact on any such outcome or related settlements;
- Capital market conditions, which may affect our ability to raise capital on favorable terms;
- Price risk due to marketable securities held as investments in benefit plans; and
- Other factors discussed from time to time in our other filings with the SEC.

New factors that could cause actual results to differ materially from those described in forward-looking statements emerge from time to time, and it is not possible for us to predict all such factors, or the extent to which any such factor or combination of factors may cause actual results to differ from those contained in any forward-looking statement. We assume no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events, or otherwise.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

**Trading Activities**

The following table provides a reconciliation of our activity in energy trading contracts that meet the definition of a derivative under SFAS 133 and that were marked-to-market during the six months ended June 30, 2006 (in thousands):

Total fair value of energy marketing positions marked-to-market at December 31, 2005	\$	5,879 <sup>(a)</sup>
Net cash settled during the period on positions that existed at December 31, 2005		(18,842)
Unrealized gain on new positions entered during the period and still existing at June 30, 2006		9,529
Realized gain on positions that existed at December 31, 2005 and were settled during the period		12,862
Unrealized loss on positions that existed at December 31, 2005 and still exist at June 30, 2006		(131)
		<hr/>
Total fair value of energy marketing positions at June 30, 2006	\$	<u>9,297</u>

(a) The fair value of positions marked-to-market consists of derivative assets/liabilities and natural gas inventory that has been designated as a hedged item and marked-to-market as part of a fair value hedge, as follows (in thousands):

	<u>June 30, 2006</u>	<u>March 31, 2006</u>	<u>December 31, 2005</u>
Net derivative assets/(liabilities)	\$ 13,585	\$ 13,739	\$ (764)
Fair value adjustment recorded in material, supplies and fuel	(4,288)	(5,353)	6,643
	<hr/>	<hr/>	<hr/>
	\$ 9,297	\$ 8,386	\$ 5,879

On January 1, 2003, the Company adopted EITF 02-3. The adoption of EITF 02-3 resulted in certain energy trading activities no longer being accounted for at fair value, therefore, the above reconciliation does not present a complete picture of our overall portfolio of trading activities and our expected cash flows from those operations. EITF Issue No. 98-10 "Accounting for Contracts Involved in Energy Trading and Risk Management Activities" (EITF 98-10) was superseded by EITF 02-3 and allowed a broad interpretation of what constituted "trading activity" and hence what would be marked-to-market. EITF 02-3 took a much narrower view of what "trading activity" should be marked-to-market, limiting mark-to-market treatment primarily to only those contracts that meet the definition of a derivative under SFAS No. 133 "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133). At our natural gas and crude oil marketing operations, we often employ strategies that include derivative contracts along with inventory, storage and transportation positions to accomplish the objectives of our producer services, end-use origination and wholesale marketing groups. Except in very limited circumstances when we are able to designate transportation, storage or inventory positions as part of a fair value hedge, SFAS 133 generally does not allow us to mark our inventory, transportation or storage positions to market. The result is that while a significant majority of our energy marketing positions are fully economically hedged, we are required to mark some parts of our overall strategies (the derivatives) to market value, but are generally precluded from marking the rest of our economic hedges

(transportation, inventory or storage) to market. Volatility in reported earnings and derivative positions should be expected given these accounting requirements.

The sources of fair value measurements for natural gas marketing derivative contracts were as follows (in thousands):

Source of Fair Value	Maturities		Total Fair Value
	Less than 1 year	1 – 2 years	
Actively quoted (i.e., exchange-traded) prices	\$ 10,864	\$ —	\$ 10,864
Prices provided by other external sources	(2,194)	627	(1,567)
Modeled	—	—	—
Total	\$ 8,670	\$ 627	\$ 9,297

The following table presents a reconciliation of our June 30, 2006 energy marketing positions recorded at fair value under generally accepted accounting principles (GAAP) to a non-GAAP measure of the fair value of our energy marketing forward book wherein all forward trading positions are marked-to-market (in thousands). The approach used in determining the non-GAAP measure is consistent with our previous accounting methods under EITF 98-10. In accordance with generally accepted accounting principles and industry practice, the Company includes a “Liquidity Reserve” in its GAAP marked-to-market fair value. This “Liquidity Reserve” accounts for the estimated impact of the bid/ask spread in a liquidation scenario under which the Company is forced to liquidate its forward book on the balance sheet date.

Fair value of our energy marketing positions marked-to-market in accordance with GAAP (see footnote (a) above)	\$ 9,297
Increase in fair value of inventory, storage and transportation positions that are part of our forward trading book, but that are not marked-to-market under GAAP	13,563
Fair value of all forward positions (Non-GAAP)	22,860
“Liquidity Reserve” included in GAAP marked-to-market fair value	1,899
Fair value of all forward positions excluding the “Liquidity Reserve” (Non-GAAP)	\$ 24,759

There have been no material changes in market risk faced by us from those reported in our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission. For more information on market risk, see Part II, Item 7 in our 2005 Annual Report on Form 10-K, and Note 12 of our Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

## Activities Other Than Trading

The Company has entered into agreements to hedge a portion of its estimated 2006 and 2007 natural gas and crude oil production. The hedge agreements in place are as follows:

### Natural Gas

Location	Transaction Date	Hedge Type	Term	Volume (Mmbtu/day)	Price
San Juan El Paso	07/12/2005	Swap	04/06 – 10/06	5,000	\$ 7.00
San Juan El Paso	12/14/2005	Swap	11/06 – 03/07	5,000	\$ 10.25
San Juan El Paso	04/03/2006	Swap	11/06 – 03/07	5,000	\$ 8.50
San Juan El Paso	06/15/2006	Swap	11/06 – 03/07	2,500	\$ 8.52
San Juan El Paso	06/15/2006	Swap	11/06 – 03/07	2,500	\$ 8.59
San Juan El Paso	04/03/2006	Swap	04/07 – 10/07	5,000	\$ 7.46
San Juan El Paso	06/02/2006	Swap	04/07 – 10/07	2,500	\$ 7.20
CIG	07/28/2006	Swap	09/06 – 03/08	2,500	\$ 7.60
CIG	07/31/2006	Swap	09/06 – 03/08	2,500	\$ 7.85

### Crude Oil

Location	Transaction Date	Hedge Type	Term	Volume (barrels/month)	Price
NYMEX	10/06/2004	Swap	Calendar 2006	10,000	\$ 41.00
NYMEX	12/14/2005	Put	Calendar 2006	5,000	\$ 55.00
NYMEX	01/12/2006	Put	02/06 – 12/06	5,000	\$ 65.50
NYMEX	07/29/2005	Swap	Calendar 2007	5,000	\$ 61.00
NYMEX	08/04/2005	Swap	Calendar 2007	5,000	\$ 62.00
NYMEX	01/04/2006	Swap	Calendar 2007	5,000	\$ 65.00
NYMEX	04/03/2006	Put	Calendar 2007	5,000	\$ 70.00

## ITEM 4. CONTROLS AND PROCEDURES

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (Exchange Act)) as of June 30, 2006. Based on their evaluation, they have concluded that our disclosure controls and procedures are adequate and effective to ensure that material information relating to us that is required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the required time periods.

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2006 that materially affected or are reasonably likely to materially affect our internal control over financial reporting.

BLACK HILLS CORPORATION

Part II – Other Information

Item 1. Legal Proceedings

For information regarding legal proceedings, see Note 20 in Item 8 of the Company's 2005 Annual Report on Form 10-K and Note 13 in Item 1 of Part I of this Quarterly Report on Form 10-Q, which information from Note 13 is incorporated by reference into this item.

Item 1A. Risk Factors

There have been no material changes in our Risk Factors from those reported in Item 1A. of Part I of our 2005 Annual Report on Form 10-K filed with the Securities and Exchange Commission, which we incorporate by reference herein.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

**Unregistered Sales of Equity Securities**

None.

**Issuer Purchases of Equity Securities**

<u>Period</u>	(a) Total Number of Shares <u>Purchased</u>	(b) Average Price Paid <u>per Share</u>	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans <u>or Programs</u>	(d) Maximum Number (or Approximate Dollar Value) of Shares That May Yet Be Purchased Under the Plans <u>or Programs</u>
April 1, 2006 – April 30, 2006	131 <sup>(1)</sup>	\$ 36.40	—	—
May 1, 2006 – May 31, 2006	2,567 <sup>(1)</sup>	\$ 35.80	—	—
June 1, 2006 – June 30, 2006	290 <sup>(2)</sup>	\$ 34.11	—	—
Total	2,988	\$ 35.66	—	—

(1) Shares were acquired from certain officers and key employees under the share withholding provisions of the Restricted Stock Plan for the payment of taxes associated with the vesting of shares of Restricted Stock.

(2) Shares acquired by a Rabbi Trust for the Outside Directors Stock Based Compensation Plan.

Submission of Matters to a Vote of Security Holders

- (a) The Annual Meeting of Shareholders was held on May 24, 2006.
- (b) The following Directors were elected to serve until the Annual Meeting of Shareholders in 2009:

David C. Ebertz  
 John R. Howard  
 Stephen D. Newlin

Other Directors whose terms of office continue are:

David R. Emery  
 Jack W. Eugster  
 Kay S. Jorgensen  
 Richard Korpan  
 William J. Van Dyke (resigned June 8, 2006)  
 John B. Vering  
 Thomas J. Zeller

## (c) Matters Voted Upon at the Meeting

1. Elected three Class III Directors to serve until the Annual Meeting of Shareholders in 2009.

David C. Ebertz	
Votes For	29,709,120
Votes Withheld	319,629

John R. Howard	
Votes For	29,473,114
Votes Withheld	555,635

Stephen D. Newlin	
Votes For	29,709,882
Votes Withheld	318,867

2. Ratified the appointment of Deloitte & Touche LLP to serve as Black Hills Corporation's independent auditors in 2006.

Votes For	29,799,265
Votes Against	158,307
Abstain	71,177
Broker Non-Votes	—



Exhibits

## Exhibits–

- Exhibit 10.1      Second Amended and Restated Credit Agreement made as of the 1<sup>st</sup> day of June, 2006, among Enserco Energy Inc., the borrower, Fortis Capital Corp., as administrative agent, documentation agent and collateral agent, BNP Paribas, US Bank National Association, Societe Generale, and the Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch. (Incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed June 7, 2006.)
- Exhibit 10.2      Amended and Restated Credit Agreement dated as of May 24, 2006, among Wygen Funding, Limited Partnership, the Lenders parties thereto, the Financial Institutions parties thereto, as Liquidity Purchasers; and Calyon New York Branch, as Administrative Agent, Bookrunner and Lead Arranger.
- Exhibit 10.3      Amended and Restated Guarantee dated as of May 24, 2006, from Black Hills Corporation, as Guarantor, in favor of Wygen Funding, Limited Partnership.
- Exhibit 31.1      Certification pursuant to Rule 13a – 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
- Exhibit 31.2      Certification pursuant to Rule 13a – 14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
- Exhibit 32.1      Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes – Oxley Act of 2002.
- Exhibit 32.2      Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes – Oxley Act of 2002.

BLACK HILLS CORPORATION

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BLACK HILLS CORPORATION

/s/ David R. Emery  
David R. Emery, Chairman, President and  
Chief Executive Officer

/s/ Mark T. Thies  
Mark T. Thies, Executive Vice President and  
Chief Financial Officer

Dated: August 9, 2006

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 10.1	Second Amended and Restated Credit Agreement made as of the 1 <sup>st</sup> day of June, 2006, among Enserco Energy Inc., the borrower, Fortis Capital Corp., as administrative agent, documentation agent and collateral agent, BNP Paribas, US Bank National Association, Societe Generale, and the Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 7, 2006.)
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AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 24, 2006

among

WYGEN FUNDING, LIMITED PARTNERSHIP

THE LENDERS PARTIES HERETO,

THE FINANCIAL INSTITUTIONS PARTIES HERETO,  
as Liquidity Purchasers

and

CALYON NEW YORK BRANCH,  
as Administrative Agent, Bookrunner and Lead Arranger.

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\* SCHEDULES

- I Acquisition Documents
- II List of Permitted Assets
- III Tranche A Lender
- IV Tranche B Lenders
- V Liquidity Purchaser Percentages
- VI Notice Information

\* The above schedules have been omitted from this filing, however the Registrant will provide them to the Securities and Exchange Commission upon request.

\* EXHIBITS

A-1	Form of Note (Tranche A Note)
A-2	Form of Note (Tranche B Note)
B-1	Form of Notice of Continuation
B-2	Form of Notice of Conversion
C	Lessee's Consent
D	Lease Agreement
E	Agreement for Lease
F	Intercreditor and Security Agreement
G	Lessor Mortgage
H	Lessee Mortgage
I	Collateral Assignment
J	Ground Lease
K	Guaranty
L	Guarantor's Consent
M	Management Agreement
N	Securities Collateral Account Agreement

\* The above exhibits have been omitted from this filing, however the Registrant will provide them to the Securities and Exchange Commission upon request.

AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 24, 2006 (this "Agreement") among WYGEN FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership (the "Company"), the Lenders (as defined below) now or hereafter parties hereto, the Liquidity Purchaser (as defined below), and CALYON NEW YORK BRANCH (successor to Credit Lyonnais New York Branch) ("Calyon"), as administrative agent for such Lenders under this Agreement (in such capacity, the "Administrative Agent") and as bookrunner and lead arranger (in such capacity, the "Lead Arranger").

**W I T N E S S E T H:**

WHEREAS, the Company is a Delaware limited partnership formed for the purpose of acquiring and constructing certain assets and leasing such assets to Black Hills Wyoming, Inc.;

WHEREAS, the Company, certain parties as Lenders and Liquidity Purchasers, Administrative Agent and Lead Arranger entered into that certain Credit Agreement dated as of July 20, 2001 (as amended by Amendment No. 1 to Credit Agreement, dated as of September 21, 2001, Amendment No. 2 to Credit Agreement, dated as of December 20, 2001 and Amendment No. 3 to Credit Agreement, dated as of July 18, 2003, the "Existing Credit Agreement") pursuant to which, the Lenders agreed to finance such acquisitions and construction through (i) the issuance of Commercial Paper or (ii) the sale of Percentage Interests under the applicable LAPA, under the terms and conditions set forth therein (the "CP Funding Arrangement");

WHEREAS, immediately prior to the execution and delivery of this Agreement, Atlantic (as defined below) has assigned its interests in the Loans (the "Atlantic Loans"), and the assignees (the "Assignee Lenders") and the Company desire that such Loans be funded term loans in lieu of the CP Funding Arrangement; and

WHEREAS, the Company, the Lenders, the Liquidity Purchaser, Administrative Agent and Lead Arranger desire to amend and restate the Existing Credit Agreement, on the terms and conditions set forth herein, including to provide for (i) the termination of all CP Funding Arrangements under the Existing Credit Agreement with respect to the Atlantic Loans, and the replacement of such terminated arrangements with Loans from the Assignee Lenders and (ii) the extension of the Tranche A Maturity Date from June 30, 2006 to June 30, 2008;

NOW, THEREFORE, in consideration of the premises and for other valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the Company, the Lenders, the Administrative Agent and the Lead

Arranger hereby agree that the Existing Credit Agreement shall be amended and restated as follows:

## ARTICLE I

### DEFINED TERMS

Section 1.01. Definitions. Each term defined in this Section 1.01, when used in this Agreement, has the meaning indicated below:

"Account Bank" is defined in the preamble of the Securities Collateral Account Agreement.

"Acquisition Certificate" shall mean the "Acquisition Certificate" referred to in Section 4(b) of the Agreement for Lease.

"Acquisition Cost" shall have the meaning set forth in the Agreement for Lease.

"Acquisition Documents" shall mean all documents listed on Schedule I annexed hereto.

"Additional Rent" shall have the meaning set forth in the Lease.

"Administrative Agent-Related Persons" shall mean, as the context may require, (a) Calyon, any successor administrative agent arising under Section 10.09 and the Lead Arranger and (b) each entity that acts as a liquidity agent or in a similar capacity with regard to the Hannover Liquidity Purchasers party to the Hannover LAPA, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Adjusted Eurodollar Rate" means the applicable London Interbank Offered Rate, as applicable to any Interest Period and, in the event any Lender is required to maintain reserves against "Eurocurrency Liabilities" under Regulation D, during such period the Adjusted Eurodollar Rate shall mean a rate per annum equal to the quotient obtained (rounded upwards, if necessary, to the next higher 1/16th of 1%) by dividing (i) the applicable London Interbank Offered Rate for such Interest Period by (ii) 1.00 minus the Eurodollar Reserve Percentage.

"Advance" shall mean an advance of funds by the Company pursuant to Section 4, 5, 6 or 7 of the Agreement for Lease, for the purpose of financing Project Costs through its borrowing of Loans hereunder.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"AFL Event of Default" shall mean any of the events specified in Section 11.1 of the Agreement for Lease.

"AFL Potential Default" shall mean any event which, but for the lapse of time, or giving of notice, or both, would constitute an AFL Event of Default.

"After Tax Basis" shall mean, with respect to any payment to be received, on a basis such that such payment received shall be supplemented by a further payment or payments to the recipient so that the sum of all such payments shall, after deduction for the net increase in all Taxes (taking into account any related credits or deductions claimed in the same or a prior period for which such Taxes are imposed as determined in good faith by such recipient in its sole discretion) using such ordering and other principles as it shall reasonably determine (without regard to when such Taxes are deemed utilized under the applicable Tax laws) resulting from the receipt (actual or constructive) or accrual of such payments, be equal to the payment otherwise required to be made.

"Aggregate Commitment Amount" shall mean \$128,264,140.50, or such lesser amount as provided in Section 4.07 hereof.

"Agreement" shall mean this Credit Agreement.

"Agreement for Lease" shall mean the Agreement for Lease, dated as of July 20, 2001, a copy of which is annexed hereto as Exhibit E, entered into between the Company, as owner, and the Lessee, as agent, pursuant to which the Lessee undertakes to install and construct the Project on the Premises and to lease the Project pursuant to the Lease upon satisfaction of certain conditions set forth therein.

"Applicable Law" shall mean all existing and future applicable laws (including Environmental Requirements), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any Governmental Authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety, the environment,

natural resource or land use (including, without limitation, wetlands) and those pertaining to the construction, use, occupancy, zoning or operation of the Project) or affecting either the Company, the Lessee, the Guarantor, the Project or any material interests in any other kind of property or asset, whether real, personal or mixed, or tangible or intangible, of the Company, the Lessee or the Guarantor.

"Applicable Margin" shall mean with respect to any Eurodollar Loan and with respect to any CP Rate Loan, the percentage per annum set forth in their respective columns in the table below based on the Pricing Level in effect on such date:

<u>Applicable Pricing Level</u>	<u>Margin for Eurodollar Loans (in basis points)</u>	<u>Margin for CP Rate Loans (in basis points)</u>
Level I	35.0	35.0
Level II	40.0	40.0
Level III	50.0	50.0
Level IV	62.5	60.0
Level V	75.0	70.0
Level VI	100.0	95.0

"Applicable Payee" shall have the meaning set forth in Section 11.05(b)(1) hereof.

"Applicable Payor" shall have the meaning set forth in Section 11.05(b)(1) hereof.

"Assets" shall mean any and all assets or property of any kind, real or personal, now owned or hereafter acquired by the Company.

"Assignee" shall have the meaning set forth in Section 11.02(a) hereof.

"Assignment Agreement" shall mean an assignment agreement entered into by a Lender and an assignee, in accordance with Section 11.02 hereof, and in substantially the form of Exhibit L hereto.

"Assignment of Leases and Rents" shall mean the assignment of leases and rents under the Lease entered into by the Company and the Collateral Agent on July 20, 2001.

"Atlantic" shall mean Atlantic Asset Securitization Corp., a Delaware corporation.

"Atlantic LAPA" shall mean, collectively, (i) the Tranche A Loan Liquidity Asset Purchase Agreement, dated as of July 20, 2001, as amended and restated as of September 21, 2001 and as further amended and restated as of December 20, 2001, by and among Credit Lyonnais New York Branch, as liquidity purchaser, Credit Lyonnais New York Branch, as liquidity agent, Atlantic, as issuer, and Credit Lyonnais New York Branch, as agent, and (ii) the Tranche B Loan Liquidity Asset Purchase Agreement, dated as of July 20, 2001, as amended and restated as of September 21, 2001 and as further amended and restated as of December 20, 2001, by and among Credit Lyonnais New York Branch, as liquidity purchaser, Credit Lyonnais New York Branch, as liquidity agent, Atlantic, as issuer, and Credit Lyonnais New York Branch, as agent, as each of the same may be further amended, restated or supplemented from time to time.

"Attorney Costs" shall mean and include, without duplication, all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

"Authorized Officer" means any of the Chief Executive Officer, the President, the Chief Financial Officer, any Senior Vice President, any Vice President, the Controller, the Treasurer or any Assistant Treasurer of the Guarantor or the Lessee, as applicable.

"Authorized Investments" shall have the meaning as set forth in the Securities Collateral Account Agreement.

"Balance" shall mean as of any date of determination, with respect to any Lender, an amount equal to the outstanding principal of and all accrued and unpaid interest on its Loans.

"Base Rate" shall mean, for any period, a fluctuating interest rate per annum as shall be in effect from time to time which rate per annum shall at all times be equal to the higher of (a) the rate of interest established for Dollar loans by Calyon at its New York Branch lending office from time to time as its prime rate, whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit and (b) the sum of (x) the Federal Funds Effective Rate plus (y)  $\frac{1}{2}$  of 1% per annum.

"Base Rate Loans" shall mean a Loan bearing interest at the Base Rate.

"Basic Rent" shall have the meaning set forth in the Lease.

"Borrowing" shall mean the aggregate amount of Loans to be made by the Lenders to the Company pursuant to any one Notice of Borrowing delivered pursuant to the Existing Credit Agreement.

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York, Chicago, Illinois or Wyoming are authorized or required by law to close, except that, when used in connection with a Loan, such day shall also be a day other than a day on which banks engaging in transactions in the commercial paper market in New York, New York are authorized or required by law to close, and except that, when used in connection with the Eurodollar Reserve Percentage, such day shall also be a day on which dealings between banks are carried out in the London interbank market.

"Calyon" shall have the meaning set forth in the Preamble.

"Capital Contributions" shall have the meaning set forth in Section 5.1 of the Limited Partnership Agreement.

"Capitalized Interest" shall have the meaning set forth in Section 2.04 hereof.

"Closing Date" shall mean July 20, 2001.

"Collateral" shall mean the collective reference to the Project and each Asset (and all products and proceeds thereof) now or hereafter encumbered by the lien and security interest created under any of the Security Documents.

"Collateral Account" shall have the meaning set forth in Section 4.05(a) hereof.

"Collateral Agent" shall mean Calyon, in its capacity as collateral agent under the Intercreditor and Security Agreement, the Lessee Mortgage, the Lessor Mortgage, the Collateral Assignment and any other Security Document to which it may be a party from time to time, and any permitted successor or assign.

"Collateral Assignment" shall mean any collateral assignment entered into between the Company and the Collateral Agent substantially in the form of Exhibit J hereto.

"Commercial Paper" shall have the meaning set forth in the Hannover LAPA.



"Commitment" shall mean as to any Lender, its Tranche A Loan Commitment or Tranche B Loan Commitment.

"Commitment Percentage" shall mean, as the context may require with respect to any Lender, (a) the percentage which such Lender's Commitment represents of the Aggregate Commitment Amount or (b) the percentage which such Lender's Tranche A Loan Commitment or Tranche B Loan Commitment represents of all Tranche A Loan Commitments or all Tranche B Loan Commitments, as applicable.

"Completion Amount" shall have the meaning set forth in the Agreement for Lease.

"Completion Date" shall mean the date on which the Final Advance is made.

"Construction Documents" shall have the meaning set forth in the Agreement for Lease.

"CP Rate" for any Interest Period for any CP Rate Loan, to the extent such CP Rate Loans for such Interest Period are funded by issuing Commercial Paper, the per annum rate equivalent to the "weighted average cost" (as defined below) related to the issuance of Commercial Paper that is allocated, in whole or in part, by Hannover to fund or maintain such CP Rate Loans (which may also be allocated in part to the funding of other CP Rate Loans hereunder); provided, however, that, if any component of such rate is a discount rate, in calculating the CP Rate for such CP Rate Loans for such Interest Period, Hannover shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate per annum. As used in this definition, Hannover's "weighted average cost" shall consist of (w) the actual interest rate (or discount) paid to purchaser's of Hannover's Commercial Paper (which rate shall include any fees payable to the Placement Agent (as defined in the Hannover LAPA) for placing such Commercial Paper, and such fee shall not exceed 5 bps), to the extent allocated, in whole or in part, to Hannover's Commercial Paper, (x) certain documentation and transaction costs associated with the issuance of such Commercial Paper, (y) any incremental carrying costs incurred with respect to Commercial Paper maturing on dates other than those on which corresponding funds are received by Hannover, and (z) other borrowings by Hannover, including borrowings to fund small or odd dollar amounts that are not easily accommodated in the commercial paper market (it being understood and agreed that the amount in clause (y) shall not include additional costs incurred as a result of drawing on the Hannover LAPA prior to the maturity of the Commercial Paper to be paid with the proceeds of such drawing).

"CP Rate Loan" shall mean a Loan which bears interest based upon the CP Rate.

"Distribution" shall have the meaning set forth in Section 8.14 hereof.

"Documentation Date" means the date hereof, subject to the satisfaction of the conditions precedent set forth in Section 5.01 hereof.

"Dollars" or "\$" shall mean the lawful currency of the United States of America and, in relation to any amount to be loaned or paid hereunder, funds having same day value.

"Easement Premises" shall have the meaning set forth in the Lessor Mortgage.

"Easements" shall have the meaning set forth in the Lease.

"Effective Date" shall have the meaning set forth in Section 5.01.

"Environmental Requirements" shall have the meaning set forth in the Lease.

"EPC Contract" shall have the meaning set forth in the Agreement for Lease.

"Eurodollar Loan" shall mean a Loan bearing interest at the Adjusted Eurodollar Rate.

"Eurodollar Reserve Percentage" shall mean that percentage (expressed as a decimal) which is in effect on any day that a reserve percentage is prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement for a member bank of the Federal Reserve System in respect of "Eurocurrency liabilities" (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on Eurodollar Loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of any bank to United States residents). The London Interbank Offered Rate shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" shall mean each of the events set forth in Section 9.01 hereof.

"Event of Loss" shall have the meaning set forth in the Lease.

"Event of Project Termination" shall have the meaning set forth in the Agreement for Lease.

"Excepted Payments" shall mean all indemnity payments made pursuant to Section 12 of the Agreement for Lease or Section 11 of the Lease and to which the Company (including its Partners), any other Person or any of their respective affiliates, agents, officers, directors or employees is entitled.

"Existing Credit Agreement" shall have the meaning set forth in the recitals hereto.

"Extended Term" shall have the meaning set forth in the Lease.

"EWG" shall have the meaning set forth in the Lease.

"Federal Funds Effective Rate" shall mean, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent."

"Fee Agreement" shall have the meaning set forth in Section 4.01(a) hereof.

"Fee Premises" shall have the meaning as set forth in the Lessor Mortgage.

"Final Advance" shall have the meaning set forth in Section 6 of the Agreement for Lease.

"Force Majeure Delay" shall have the meaning set forth in the Agreement for Lease.

"Fuel Supplier" shall mean Wyodak Resources Development Corp.

"Funding Date" shall mean any date on which Loans were made to the Company under the Existing Credit Agreement.

"General Partner" shall mean Wygen Capital, Inc., a Delaware corporation.

"Governmental Action" shall have the meaning set forth in the Agreement for Lease.

"Governmental Authority" shall mean any nation or government, any state, regional, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any court or administrative tribunal), and having jurisdiction over the Project, the Premises, the Company, any Obligor or the Operative Documents, as applicable, except that with respect to Taxes and indemnification obligations to Tax Indemnitees, the term "Governmental Authority" shall not include any such authority of a jurisdiction outside the United States of America.

"Ground Lease" shall mean a ground lease between the Lessee, as lessor, and the Company, as lessee, substantially in the form of Exhibit K hereto.

"Guarantor" shall mean Black Hills Corporation, a South Dakota corporation.

"Guarantor's Consent" shall mean the Guarantor's Consent, dated as of the date hereof, a copy of which is annexed hereto as Exhibit N, entered into between the Guarantor, the Company and the Collateral Agent, pursuant to which the Guarantor consents to the execution and delivery of the Intercreditor and Security Agreement and the other Security Documents and the Company irrevocably directs the Guarantor to make all payments to be made under the Guaranty directly to the Collateral Account.

"Guaranty" shall mean the amended and restated guaranty, dated as of the date hereof, a copy of which is annexed hereto as Exhibit M, pursuant to which the Guarantor guarantees the obligations of the Lessee under the Lease and the Agreement for Lease.

"Hannover" shall mean Hannover Funding Company LLC, a Delaware limited liability company.

"Hannover LAPA" shall mean, collectively, (i) the Tranche A Loan Liquidity Asset Purchase Agreement, dated as of December 20, 2001, by and among the Hannover Liquidity Purchasers from time to time parties thereto, Hannover and Norddeutsche Landesbank Girozentrale, as Administrator and as Liquidity Agent, and (ii) the Tranche B Loan Liquidity Asset Purchase Agreement, dated as of December 20, 2001, by and among the Hannover Liquidity Purchasers from time to time parties thereto,

Hannover and Norddeutsche Landesbank Girozentrale, as Administrator and as Liquidity Agent, as each of the same may be amended, restated or supplemented from time to time.

"Hannover Liquidity Purchasers" shall mean (i) Norddeutsche Landesbank Girozentrale, a bank organized under the laws of Germany and (ii) any other financial institution that may become a party from time to time to the Hannover LAPA.

"Hedge" shall mean a Swap entered into by the Company pursuant to Section 7.10 hereof.

"Indebtedness" shall mean for any Person (i) all indebtedness or other obligations of such Person for borrowed money and all indebtedness of such Person with respect to any other items (other than income taxes payable, accounts payable, deferred taxes and deferred credits) which would, in accordance with generally accepted accounting principles, be classified as a liability on the balance sheet of such Person, (ii) all obligations of such Person to pay the deferred purchase price of property or services, (iii) all obligations of such Person (contingent or otherwise) under reimbursement or similar agreements with respect to the issuance of letters of credit, (iv) all indebtedness or other obligations of such Person under or in respect of any swap, cap, collar or other financial hedging arrangement (including, without limitation, any Hedge), (v) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above, the payment or collection of which such Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such Person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase products or securities, to provide funds for payment, to maintain working capital or other balance sheet conditions or otherwise to assure a creditor against loss, and (vi) all indebtedness or other obligations of any other Person of the type specified in clause (i), (ii), (iii) or (iv) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien, upon or in property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or becomes liable for the payment of such indebtedness or obligations.

"Indemnified Liabilities" shall have the meaning set forth in Section 11.05(a) hereof.

"Indemnitee" shall mean each of the Lenders, the Administrative Agent, the Collateral Agent, the Liquidity Agent, the Hannover Liquidity Purchasers, their respective Affiliates and their respective successors, assigns, directors, shareholders, partners, officers, employees and agents.

"Intercreditor and Security Agreement" shall mean the Intercreditor and Security Agreement, substantially in the form of Exhibit F hereto, entered into between the Collateral Agent and the Company.

"Interest Period" shall mean, with respect to any Loan, the period commencing on the applicable Funding Date for such Loan, or, if applicable, the date on which the method of calculating interest on such Loan changes and (a) at any time that the Interest Rate is determined by reference to the CP Rate, ending on the twentieth day in the calendar month that is one month thereafter and each successive period commencing on the last day of the preceding Interest Period and ending on the twentieth day of the calendar month that is one month thereafter, or, in either case, such earlier day in such calendar month as agreed to by Hannover, (b) at any time that the Interest Rate is determined by reference to the Adjusted Eurodollar Rate, ending on the twentieth day in the calendar month that is one, two, three or six months thereafter and each successive period commencing on the day after the last day of the preceding Interest Period and ending on the twentieth day of the calendar month that is one, two, three or six months thereafter, in each case as selected by the Company in a Notice of Continuation, and (c) at any time that the Interest Rate is determined by reference to the Base Rate, continuing indefinitely until such time as the Interest Rate is determined by reference to the Adjusted Eurodollar Rate pursuant to 2.07(c) or the CP Rate pursuant to Section 2.07(a) hereof;

"Interim Agency Agreement" shall mean the Amended and Restated Construction Agency Agreement dated as of August 26, 1999 between the Company and the Lessee, as amended from time to time.

The foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Loan, the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period determined by reference to the Adjusted Eurodollar Rate that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of the then commencing Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) any Interest Period that would otherwise extend beyond the applicable Maturity Date shall end on the Maturity Date.

"Interest Rate" shall mean:

(a) with respect to CP Rate Loans, the CP Rate plus the Applicable Margin for CP Rate Loans;

(b) with respect to Eurodollar Loans, the Adjusted Eurodollar Rate plus the Applicable Margin for Eurodollar Loans; and

(c) with respect to Base Rate Loans, the Base Rate.

"Land Leasehold Estate" shall mean the leasehold and easement estates granted to the Company in the real property pursuant to the Ground Lease and the Required Easement Agreements.

"Lease" shall mean the Lease Agreement, dated as of July 20, 2001, a copy of which is annexed hereto as Exhibit D, entered into by the Company, as lessor, and the Lessee, as lessee, pursuant to which the Lessee leases or subleases the Project from the Company.

"Lease Event of Default" shall mean any of the events specified in Section 18 of the Lease.

"Lease Potential Event of Default" shall mean any event which, but for the lapse of time, or giving of notice, or both, would constitute a Lease Event of Default.

"Lease Term" shall have the meaning set forth in the Lease.

"Lender" shall mean collectively, the Tranche A Lenders and the Tranche B Lenders, and each other Lender that has become a "Lender" hereunder as provided in Section 11.02(a) hereof.

"Lending Office" shall mean (a) with respect to any Lender, the office specified below its name on the signature page hereof or in an Assignment Agreement executed and delivered by such Lender pursuant to Section 11.02 hereof or (b) subject to the provisions of Section 11.02(b) hereof, such other office or offices as any Lender may designate in writing to the Administrative Agent to be its Lending Office for purposes hereof or any Loan or type of Loan hereunder.

"Lessee" shall mean Black Hills Wyoming, Inc. (formerly known as Black Hills Generation, Inc.), a Wyoming corporation and its permitted successors and assigns, in its capacity as Lessee under the Lease and as agent under the Agreement for Lease.

"Lessee's Consent" shall mean the Lessee's Consent, substantially in the form of Exhibit C hereto, entered into among the Lessee, the Company and the Collateral Agent pursuant to which the Lessee consents to the execution of the Intercreditor and Security Agreement and the Lessor Mortgage, and the Company directs the Lessee to make all payments under the Agreement for Lease and the Lease directly to the Collateral Account.

"Lessee Financing Statements" shall mean the financing statements delivered by the Lessee in connection with the Lease and the Lessee Mortgage.

"Lessee Mortgage" shall mean with respect to the Project, a mortgage, substantially in the form of Exhibit H hereto, pursuant to which the Lessee grants a first priority Lien on the Lessee's interest in the Project to the Company.

"Lessor Financing Statements" shall mean the financing statements delivered by the Company in connection with the Lessor Mortgage and other Security Documents.

"Lessor Mortgage" shall mean with respect to the Project, a mortgage, substantially in the form of Exhibit G hereto, pursuant to which the Company grants a first priority Lien on its interest in the Project and the rents arising therefrom to the Collateral Agent for the benefit of the secured parties referred to therein.

"Lien" shall mean any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Limited Partnership Agreement" shall mean the Limited Partnership Agreement of the Company dated as of July 20, 2001, between the General Partner and the limited partners named therein.

"Liquidity Agent" shall mean Norddeutsche Landesbank Girozentrale, in its capacity as Liquidity Agent for the Hannover Liquidity Purchasers under the Hannover LAPA, together with its successors and assigns.



"Loans" shall mean, collectively, the Tranche A Loans and the Tranche B Loans.

"London Interbank Offered Rate" shall mean, as applicable to any Eurodollar Loan, the rate per annum determined by the Administrative Agent on the basis of the offered rate for deposits in Dollars of amounts equal or comparable to the principal amount of such Eurodollar Loan offered for a period comparable to such Interest Period, which rates appear on the Telerate Screen Page 3750 as of 11:00 a.m., London time, two (2) Business Days prior to the first day of each such Interest Period, provided that (i) if more than one such offered rate appears on the Telerate Screen Page 3750, the "London Interbank Offered Rate" will be the arithmetic average (rounded upwards, if necessary, to the next higher 1/16th of 1%) of such offered rates; and (ii) if no such offered rates appear on such page, the "London Interbank Offered Rate" for such Interest Period will be the rate per annum quoted by the Administrative Agent's London Branch, two (2) Business Days prior to the first day of each such Interest Period, for deposits in Dollars offered to prime banks for a period comparable to such Interest Period in an amount comparable to the principal amount of such Eurodollar Loan.

"Loss Payment" shall have the meaning set forth in the Agreement for Lease.

"Majority Lenders" shall mean, at any time, Lenders holding at least fifty-one percent (51%) of the outstanding Loans; provided that in the case of the CP Rate Loans, each Hannover Liquidity Purchaser shall be deemed to hold an interest in all CP Rate Loans calculated using the percentages set forth on Schedule V hereto, as such Schedule may be amended from time to time.

"Management Agreement" shall mean the Management Agreement, a copy of which is annexed as Exhibit M hereto, entered into by the Company and ML Leasing.

"Maturity Date" shall mean the Tranche A Maturity Date or the Tranche B Maturity Date, as applicable.

"Maximum Liquidity Commitment" shall have the meaning given to that term in the Hannover LAPA.

"Memorandum of Lease" shall mean the memorandum of lease between the Company and the Lessee, in form for recording in the office of the Clerk of Campbell County, Wyoming.

"Merrill" shall mean Merrill Lynch & Co., Inc., a Delaware corporation.

"ML Leasing" shall mean ML Leasing Equipment Corp., a Delaware corporation.

"Moody's" shall mean Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency.

"Note" shall mean a Tranche A Note or a Tranche B Note.

"Note Register" shall have the meaning set forth in Section 2.09 hereof.

"Notice of Continuation" shall mean an irrevocable notice, substantially in the form of Exhibit B-1 hereto, given to the Administrative Agent by the Company pursuant to Section 2.07(c) hereof.

"Notice of Conversion" shall mean an irrevocable notice, substantially in the form of Exhibit B-2 hereto, given to the Administrative Agent by the Company pursuant to Section 2.07(c) hereof.

"Obligations" shall mean any and all of the debts, obligations and liabilities of the Company provided for or arising under this Agreement or the Operative Documents to which the Company is a party (including, without limitation, the obligation to repay Loans made under this Agreement), whether now existing or hereafter arising, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not from time to time decreased or extinguished and later increased, created or incurred.

"Obligors" shall mean collectively, the Lessee and the Guarantor.

"Operative Documents" shall mean the Lease, the Shortfall Agreement, the Guaranty, the Notes, the Ground Lease, the Securities Collateral Account Agreement, the Fee Agreement, the Hannover LAPA and the Security Documents.

"Other Taxes" shall mean any stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made by the Company hereunder or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any Operative Documents.

"Outstanding Loans" shall mean all Loans made by the Lenders pursuant hereto and not repaid by the Company, except Loans to be repaid or prepaid from new Loans being made on the date such Loans are repaid or prepaid.

"Overdue Rate" shall mean, with respect to any Loan, the Interest Rate then in effect for such Loan, plus two percent (2%) per annum, or the highest rate permitted by Applicable Law (if any), whichever is less.

"Partners" shall mean the General Partner and any and all limited partners of the Company.

"Payment Date" shall mean with respect to the Tranche A Loans and Tranche B Loans, (i) if the Interest Rate is determined by reference to the Adjusted Eurodollar Rate or the CP Rate, the Payment Date shall be the last day of each Interest Period, but in no event less often than quarterly; and (ii) if the Interest Rate is determined by reference to the Base Rate, the Payment Date shall be the twentieth (20th) day of each month.

"Payment Default" shall mean (i) an Event of Default resulting from a failure of the Company to pay any amount owing by it under this Agreement (including, without limitation, any amount due upon an acceleration of the Obligations), (ii) an Event of Default resulting from a failure of the Lessee or the Guarantor to pay any amount owing by it under any Operative Document to which it is a party, or (iii) an Event of Default described in clause (f) or (g) of Section 9.01 hereof, or (iv) a Lease Event of Default described in clause (i) or (j) of Section 18 of the Lease.

"Percentage Interest" shall have the meaning set forth in the Hannover LAPA.

"Permit" shall have the meaning set forth in the Agreement for Lease.

"Permitted Assets" shall mean the collective reference to the assets described on Schedule II hereto that the Company is permitted to acquire pursuant to Section 8.11(a)(i) hereof and other assets that the Company is permitted to acquire pursuant to Section 8.11(a)(ii) hereof.

"Permitted Contest" shall have the meaning set forth in Section 16 of the Agreement for Lease and Section 27 of the Lease.

"Permitted Investments" shall have the meaning set forth in Section 8.02 hereof.

"Permitted Liens" shall have the meaning set forth in Section 8.03 hereof.

"Person" shall mean any corporation, natural person, joint venture, partnership, limited liability company, trust, unincorporated association or organization or any Governmental Authority.

"Potential Default" shall mean an event which, with notice or lapse of time or both, would constitute an Event of Default.

"Potential Payment Default" shall mean a Potential Default arising from a failure of the Company or the Lessee to pay any amount owing by it under this Agreement or the Operative Documents to which it is a party, which Potential Default has not yet become an Event of Default due to the effect of a grace period applicable thereto.

"Power Purchasers" shall mean the parties to the Power Purchase Agreements as defined in the Agreement for Lease.

"Premises" shall have the meaning set forth in the Lease.

"Pricing Level" shall mean, as of any date of determination, the highest level (subject to clause (a) below) set forth below that corresponds to the rating issued from time to time by S&P or Moody's as applicable to the Guarantor's senior unsecured long-term debt:

	Debt Rating	
	(S&P)	(Moody's)
Level I	A- or better	A3 or better
Level II	BBB+	Baa1
Level III	BBB	Baa2
Level IV	BBB-	Baa3
Level V	BB+	Ba1
Level VI	below BB+	below Ba1

For example, if the S&P rating is BBB- and the Moody's rating is Baa2, Level III shall apply.

For purposes of the foregoing, (a) if the ratings for the Guarantor's senior unsecured debt by S&P and Moody's differ by more than one increment, the Pricing Level shall be the Pricing Level that corresponds to the debt rating that is one level below the better rating, (b) if ratings for the Guarantor's senior unsecured long-term debt shall not be available from both S&P and Moody's, Level VI shall be deemed applicable, provided however, if the Guarantor does not have a rating from S&P, it shall be deemed to have a rating from S&P that is two rating levels below the applicable rating the

Guarantor has from Moody's (c) if determinative ratings shall change (other than as a result of a change in the rating system used by any applicable Rating Agency) such that a change in Pricing Level would result, such change shall effect a change in Pricing Level as of the day on which it is first announced by the applicable Rating Agency, and any change in the Applicable Margin or Commitment Fee Rate due hereunder shall apply commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change, and (d) if the rating system of any of the Rating Agencies shall change prior to the date all Obligations hereunder have been paid and the Commitments canceled, the Guarantor and the Lenders shall negotiate in good faith to amend the references to specific ratings in this definition to reflect such changed rating system, and pending such amendment, if no Pricing Level is otherwise determinable based upon the foregoing, the Pricing Level in effect immediately prior to such changed rating system shall apply.

"Project" shall have the meaning given to that term in the Lease.

"Project Costs" shall have the meaning set forth in Section 1.1 of the Agreement for Lease.

"Property" of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person, and includes, without limitation, stock, partnership and limited liability company interests owned or held in any other Person by such Person.

"Punchlist" shall have the meaning given to that term in the EPC Contract.

"Purchase Commitment" shall have the meaning set forth in the Hannover LAPA.

"Purchase Date" shall have the meaning set forth in the Hannover LAPA.

"Purchase Termination Date" shall have the meaning set forth in the Hannover LAPA.

"Qualified Financial Institution" shall mean any bank or trust company which (i) is organized under the laws of the United States of America, any state thereof, any other member of the Organization of Economic Cooperation and Development or Japan and has an office in the United States of America and (ii) has capital, surplus and undivided profits of at least \$100,000,000.

"Rating Agencies" shall mean S&P and Moody's.

"Real Estate and Regulatory Documentation Date" shall mean October 23, 2001.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

"Replacement Liquidity Purchaser" shall have the meaning set forth in Section 11.01 hereof.

"Required Easement Agreements" shall have the meaning set forth in Section 7.12.

"Required Payment" shall have the meaning set forth in Section 4.06 hereof.

"S&P" shall mean Standard & Poor's Ratings Group and any successor thereto that is a nationally recognized rating agency.

"Securities Collateral Account Agreement" means the Securities Collateral Account Agreement, substantially in the form of Exhibit N to this Agreement, to be entered into at the times required pursuant to Section 5.01(l) of this Agreement, among the Account Bank, the Lessee, as grantor, the Company, as borrower, and the Administrative Agent for the benefit of the Tranche A Lenders, as assignee, as the same may be amended, supplemented, amended and restated or otherwise modified from time to time.

"Security Documents" shall mean, collectively, the Lease, the Agreement for Lease, the Lessee Mortgage, the Lessee Financing Statements, the Memorandum of Lease, the Intercreditor and Security Agreement, the Lessor Mortgage, the Lessor Financing Statements, the Assignment of Leases and Rents, each Collateral Assignment, and all other documents, agreements and instruments executed and delivered in order to establish, preserve, protect and perfect the Lien of the Company or the Administrative Agent in the Collateral.

"Shortfall Agreement" shall mean the letter agreement dated July 20, 2001 between ML Leasing and the Administrative Agent, as assigned to Merrill pursuant to that certain Assignment and Assumption Agreement dated as of September 21, 2005 between ML Leasing and Merrill, pursuant to which Merrill will agree to pay the

Administrative Agent certain amounts pertaining to the Project under the circumstances described therein.

"Sponsor" shall mean any entity that acts as the sponsor of Hannover which is a Lender under this Agreement.

"Subsidiary" of a Person shall mean (a) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (b) any partnership, association, joint venture, limited liability company, trust or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a direct or indirect Subsidiary of the Guarantor.

"Swap" shall mean an interest rate swap agreement pursuant to which the Company has swapped the interest rate payable on one or more Borrowings hereunder into a fixed rate.

"Taxes" shall mean any fees, taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever assessed or imposed by any Governmental Authority (together with any additions to tax, penalty, fine or interest thereon), including, without limitation, (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) excise taxes; (iv) real estate transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are, or are in the nature of, franchise, income, gross receipts, withholding, value added, privilege and doing business taxes, license and registration fees; (vi) payment in lieu of property taxes; and (vii) assessments on the Project, including all assessments for public improvements or benefits (whether or not such improvements are commenced or completed before or after the Completion Date).

"Tax Indemnitee" shall mean the Lenders, the Hannover Liquidity Purchasers, the Liquidity Agent, the Collateral Agent, the Administrative Agent, and their respective Affiliates, successors, assigns, directors, shareholders, partners, officers, employees and agents.

"Termination Date" shall have the meaning given to that term in the Lease.

"Termination Settlement Date" shall have the meaning given to that term in the Agreement for Lease.

"Title Company," shall have the meaning set forth in the Agreement for Lease.

"Title Policy" shall mean an ALTA form of extended coverage policy (1970 version, if available) acceptable to the Administrative Agent for (A) leasehold title insurance, covering the leasehold and easement interests in the Land Leasehold Estate and fee ownership of the improvements in an aggregate amount at least equal to the Aggregate Commitment Amount by the Title Company showing the Company as the holder of the Land Leasehold Estate, together with any necessary easements, rights-of-way or similar property rights and together with such endorsements as are reasonably requested by the Administrative Agent, including an endorsement (or a separate title insurance policy) insuring the Company as a mortgagee under the Lease in the event the Lease is recharacterized as a mortgage, and (B) lender's title insurance insuring the Lien of the Lessor Mortgage in an aggregate amount equal to the Aggregate Commitment Amount together with such endorsements as are reasonably requested by the Administrative Agent.

"Tranche A Lender" shall mean any Lender holding a Tranche A Loan, as set forth on Schedule III hereto, and any other Person that may from time to time hold a Tranche A Loan.

"Tranche A Loan" shall have the meaning set forth in Section 2.01(a) hereof.

"Tranche A Loan Commitment" shall mean, with respect to any Lender, such Lender's Commitment in the aggregate principal amount set forth on Schedule III hereof under the heading "Tranche A Loan Commitment", as such Schedule may be amended, supplemented, restated or otherwise modified from time to time.

"Tranche A Maturity Date" shall mean June 30, 2008, as such date may be extended from time to time pursuant to Section 2.11 hereof.

"Tranche A Note" shall have the meaning set forth in Section 2.02(a) hereof.

"Tranche A Percentage" shall mean the percentage set forth on Schedule III hereto as the "Tranche A Percentage."



"Tranche B Lender" shall mean any Lender holding a Tranche B Loan, as set forth on Schedule IV hereto, and any other Person that may from time to time hold a Tranche B Loan.

"Tranche B Loan" shall have the meaning set forth in Section 2.01(b) hereof.

"Tranche B Loan Commitment" shall mean, with respect to any Lender, such Lender's Commitment in the aggregate principal amount set forth on Schedule IV hereof under the heading "Tranche B Loan Commitment", as such Schedule may be amended, supplemented, and restated or otherwise modified from time to time.

"Tranche B Maturity Date" shall mean June 30, 2008, as such date may be extended from time to time pursuant to Section 2.11 hereof.

"Tranche B Note" shall have the meaning set forth in Section 2.02(b) hereof.

"Tranche B Percentage" shall mean the percentage set forth on Schedule IV hereto as the "Tranche B Percentage."

"Unreimbursed Losses" shall mean any and all losses, Taxes or other liabilities with respect to the transactions contemplated by the Operative Documents incurred by any Indemnitee, which losses, Taxes or other liabilities are not reimbursed by the Obligors pursuant to the provisions of the Operative Documents because of the limitations of EITF 97-10; provided, however, that such term shall exclude any loss, Imposition or other liability that an Obligor is not otherwise expressly required to pay pursuant to the Operative Documents; provided further, that notwithstanding any provisions of the Operative Documents to the contrary, an Obligor's obligation to later pay or reimburse an Indemnitee for an Unreimbursed Loss shall apply only to the extent that such payment or reimbursement is permitted under applicable accounting standards so that the Lease will qualify as an operating lease for purposes of Lessee's financial reporting.

"Unused Proceeds" shall have the meaning set forth in Section 2.08(a) hereof.

Section 1.02. Interpretation. 1. General. In each Operative Document, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Operative Documents, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement (including any Operative Document), document or instrument shall mean such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Operative Documents and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor;

(v) reference to any Applicable Law shall mean such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Applicable Law shall mean that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) reference in any Operative Document to any Article, Section, Appendix, Schedule or Exhibit shall mean such Article or Section thereof or Appendix, Schedule or Exhibit thereto;

(vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to an Operative Document as a whole and not to any particular Article, Section or other provision thereof;

(viii) "including" (and with correlative meaning "include") shall mean including without limiting the generality of any description preceding such term;

(ix) relative to the determination of any period of time, "from" shall mean "from and including" and "to" shall mean "to but excluding"; and

(x) with respect to any rights and obligations of the parties under the Operative Documents, all such rights and obligations shall be construed to the extent permitted by Applicable Law.

2. Computation of Time Periods. For purposes of computation of periods of time under the Operative Documents, the word "from" shall mean "from and including" and the words "to" and "until" each mean "to but excluding."

3. Accounting Terms and Determinations. Unless otherwise specified in any Operative Document, all terms of an accounting character used therein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent (except for changes concurred in by the Guarantor's independent public accountants or otherwise required by a change in GAAP) with the most recent audited consolidated financial statements of the Guarantor and its consolidated Subsidiaries delivered to the Lenders and the Liquidity Purchasers (as defined in the Existing Credit Agreement) on or prior to the Closing Date.

4. Conflict in Operative Documents. If there is any conflict between any Operative Documents, such Operative Document shall be interpreted and construed, if possible, so as to avoid or minimize such conflict but, to the extent (and only to the extent) of such conflict, this Agreement shall prevail and control.

5. Legal Representation of the Parties. The Operative Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring the Operative Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

6. Defined Terms. Unless a clear contrary intention appears, terms defined herein have the respective indicated meanings when used in each Operative Document.

## ARTICLE II

### AMOUNT AND TERMS OF CREDIT

Section 2.01. Commitments. Subject to the terms and conditions hereof,

(a) Lender Commitments.

(i) The Tranche A Lenders have made (severally and not jointly and severally) loans (the "Tranche A Loans") to the Company from time to time, which Tranche A Loans are outstanding on the Effective Date in an aggregate amount equal to \$111,100,162.92.

(ii) the Tranche B Lenders have made (severally and not jointly and severally) loans (the "Tranche B Loans") to the Company from time to time, which Tranche B Loans are outstanding on the Effective Date in an aggregate amount equal to \$17,163,977.58.

(b) Hannover Liquidity Purchaser Commitments.

(i) If Hannover does not fund or maintain all or any portion of its Tranche A Loan with Commercial Paper for any reason, the Liquidity Agent shall give to the Hannover Liquidity Purchasers a notice of a Purchase Date within the time period required under the Hannover LAPA. Upon receipt of such notice from the Administrative Agent with respect to such Tranche A Loan, the Hannover Liquidity Purchaser agrees to purchase and shall purchase Percentage Interests under, and subject to the limitations contained in, the applicable Hannover LAPA sufficient to enable such Tranche A Lender to fund or maintain such Tranche A Loan on the relevant Funding Date.

(ii) If Hannover does not fund or maintain all or any portion of its Tranche B Loan with Commercial Paper for any reason, the Liquidity Agent shall give to the Hannover Liquidity Purchasers a notice of a Purchase Date within the time period required under the applicable Hannover LAPA. Upon receipt of such notice from the Administrative Agent with respect to such Tranche B Loan, the Hannover Liquidity Purchasers agree to purchase and shall purchase Percentage Interests under, and subject to the limitations contained in, the applicable Hannover LAPA sufficient to enable such Tranche B Lender to fund or maintain such Tranche B Loan on the relevant Funding Date.

(iii) Any Loan (or portion thereof) funded by Hannover in which a Percentage Interest has been purchased pursuant to a Hannover LAPA shall be maintained as a Eurodollar Loan or Base Rate Loan as determined in accordance with Section 2.07(c) hereof. If a Percentage Interest has been purchased in a Loan, and subsequently, the Percentage Interest is repurchased by Hannover, at the next Payment Date to occur (or, immediately if such Percentage Interest was then being funded as a Base Rate Loan), that particular Loan (or portion thereof) shall be converted to a CP Rate Loan.

Section 2.02. Notes. (a) The Tranche A Loans made by each Tranche A Lender shall be evidenced by a promissory note or notes of the Company, substantially in the form of Exhibit A-1 hereto (each, a "Tranche A Note"), with appropriate insertions as to payee, date and principal amount, payable to the order of the applicable Tranche A Lender and in a principal amount equal to such Lender's Tranche A Loan Commitment as specified in Schedule III hereto. Each Tranche A Lender is hereby authorized to record

the date and amount of each Tranche A Loan made by such Lender, each continuation thereof, the date and amount of each payment or prepayment of principal thereof and the length of each Interest Period or any applicable period with respect thereto, on the schedule annexed to and constituting a part of its Tranche A Notes. Any such recordations shall constitute prima facie evidence of the accuracy of the information so recorded; provided, that the failure to make any such recordation or any error in such recordation shall not affect the Company's obligations hereunder or under such Tranche A Note. Each Tranche A Note shall (i) be dated the date of the Closing Date or as otherwise provided under Section 11.02, (ii) be stated to mature on the Tranche A Maturity Date and (iii) provide for the payment of interest in accordance with this Agreement.

(b) The Tranche B Loans made by each Tranche B Lender shall be evidenced by a promissory note of the Company, substantially in the form of Exhibit A-2 hereto (each a "Tranche B Note"), with appropriate insertions as to payee, date and principal amount, payable to the order of the applicable Tranche B Lender and in a principal amount equal to such Lender's Tranche B Loan Commitment as specified in Schedule IV hereto. Each Tranche B Lender is hereby authorized to record the date and amount of each Tranche B Loan made by such Lender, each continuation thereof, the date and amount of each payment or prepayment of principal thereof and the length of each Interest Period or any applicable period with respect thereto, on the schedule annexed to and constituting a part of its Tranche B Note. Any such recordations shall constitute prima facie evidence of the accuracy of the information so recorded; provided, that the failure to make any such recordation or any error in such recordation shall not affect the Company's obligations hereunder or under any Tranche B Note. Each Tranche B Note shall (i) be dated the date of the Closing Date or as otherwise provided under Section 11.02, (ii) be stated to mature on the Tranche B Maturity Date and (iii) provide for the payment of interest in accordance with this Agreement.

Section 2.03. [Intentionally Omitted]

Section 2.04. [Intentionally Omitted]

Section 2.05. [Intentionally Omitted]

Section 2.06. Repayment of Principal. The Company shall repay the aggregate unpaid principal amount of the Loans of each Lender on or before the applicable Maturity Date. To the extent any Loan has not been fully repaid by prepayment before the applicable Maturity Date, the Company shall repay the entire remaining outstanding amount of such Loan on the applicable Maturity Date. Without limiting the generality of the foregoing, any amounts paid to the Administrative Agent

pursuant to the Shortfall Agreement shall be applied to the repayment of the Loans promptly after receipt thereof.

Section 2.07. Interest on Loans.

(a) Each Tranche A Loan shall accrue interest during the applicable Interest Period at a rate per annum equal to the then applicable Interest Rate for such type of Tranche A Loans, and each Tranche B Loan shall accrue interest during each Interest Period at a rate per annum equal to the then applicable Interest Rate for such type of Tranche B Loans. If a notice of Purchase Date has been given under a Hannover LAPA with respect to the Loans or any portion thereof, such Loans (or portions thereof) shall cease to be CP Rate Loans on the date of purchase under such Hannover LAPA and shall therefor be either Eurodollar Loans or Base Rate Loans in accordance with this Agreement until the Administrative Agent gives notice to the Company that such Loans or portions thereof have been converted into CP Rate Loans. Interest on the unpaid principal amount of each Loan shall accrue and be capitalized on each Payment Date from the date of such Loan until the Effective Date and on the Effective Date. Interest accrued from and after the Effective Date on each Loan shall be payable in arrears on each Payment Date, on the date of any payment or prepayment, in whole or in part, of any Loan, on the Loan so paid or prepaid and on the Maturity Date.

(b) In the event that a Lender incurs any Unreimbursed Losses, the applicable interest rate shall be adjusted to the extent required to reimburse such Lender for any expenses incurred by it in connection with such Unreimbursed Losses to the extent permitted under applicable accounting standards. The Administrative Agent shall promptly notify the Company and the Lenders of its determination of the interest rate applicable to each Loan and the determination by the Administrative Agent of such interest rate shall be conclusive, absent manifest error. Upon request of the Company, the Administrative Agent shall advise the Company of the applicable Interest Rate in effect as of the date of such request.

(c) Conversion and Continuation Options. At any time that the Loans (or any portion thereof) are not CP Rate Loans, the Company shall have the right at any time upon prior irrevocable notice to the Administrative Agent (i) not later than 12:00 noon, New York City time, one Business Day prior to conversion, to convert any Eurodollar Loan to a Base Rate Loan, (ii) not later than 10:00 a.m., New York City time, three Business Days prior to conversion or continuation, to convert any Base Rate Loan into a Eurodollar Loan or to continue any Eurodollar Loan as a Eurodollar Loan for any additional Interest Period and (iii) not later than 10:00 a.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Loan to another permissible Interest Period, subject in each case, to the following:

(i) a Eurodollar Loan may not be converted at a time other than the last day of the Interest Period applicable hereto;

(ii) any portion of a Loan maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Loan;

(iii) no Eurodollar Loan may be continued as such and no Base Rate Loan may be converted to a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Majority Lenders have determined that such a continuation is not appropriate;

(iv) any portion of a Eurodollar Loan that cannot be converted into or continued as a Eurodollar Loan by reason of subsections (ii) and (iii) above automatically shall be converted at the end of the Interest Period in effect for such Loan to a Base Rate Loan; and

(v) on the last day of any Interest Period for Eurodollar Loans, if the Company has failed to give Notice of Conversion or Notice of Continuation as described in this Section 2.07(c) or if such conversion or continuation is not permitted pursuant to subsection (iv) above, such Loans shall be converted to Base Rate Loans on the last day of such then expiring Interest Period.

The Company must deliver a Notice of Continuation as shown in Exhibit B-1 to effect a continuation of any Eurodollar Loan and a Notice of Conversion as shown in Exhibit B-2 to effect a conversion of a Loan from a Eurodollar Loan to a Base Rate Loan and from a Base Rate Loan to a Eurodollar Loan.

Section 2.08. Prepayment. (a) In the event that (i) the Lessee exercises its options to purchase the Project granted in Section 13 of the Lease or Section 18.11 of the Agreement for Lease, (ii) a casualty or condemnation or other Event of Loss has occurred that results in a required purchase of the Project pursuant to Section 15(c) of the Lease, (iii) a casualty or condemnation or other Event of Loss has occurred that results in a required purchase of the Project pursuant to Section 15(b) of the Agreement for Lease, (iv) the Collateral Agent, the Company, or the Lessee is entitled to receive payment of the proceeds of insurance or payments on account of a casualty or a condemnation, or other amounts realized in connection with an Event of Loss that are not required to be expended to repair or restore the Project or to be turned over to the Lessee following the completion of such restoration or repair pursuant to the provisions of the Agreement for Lease or the Lease, as applicable, (v) the Lessee becomes obligated to pay to the Company (or its designee) the Loss Payment at any time prior to the Maturity Date or an amount equal to the Acquisition Cost pursuant to Section 11.4 of the Agreement for Lease, or (vi) either any of the proceeds of the Borrowing made to fund the Completion

Amount have not been spent or irrevocably committed to be spent six (6) months after the Effective Date or there is a drawing under the Retention Letter of Credit (if any) contemplated by the EPC Contract ("Unused Proceeds"), the Company shall prepay the Loans, in the case of a prepayment described in clauses (i), (ii) and (iii), in their entirety, in the case of a prepayment described in clause (iv), an amount equal to the lesser of (x) the proceeds realized upon any such event and (y) the balance of the outstanding Loans and accrued and unpaid interest thereon, in the case of a prepayment described in clause (v), an amount equal to the Loss Payment or the Acquisition Cost, as the case may be, and, in the case of a prepayment described in clause (vi), the amount of the Unused Proceeds. The date of prepayment shall be, in the case of clauses (i) and (ii) above, the date on which the purchase of the Project is to take place pursuant to the Lease or the Agreement for Lease, as the case may be, in the case of clause (iii) above, not later than the Termination Settlement Date, in the case of clause (iv) above, upon receipt of such payment by the Company, in the case of clause (v) above, if the Loss Payment is due, upon the occurrence of an Event of Project Termination and if the Acquisition Cost is due, then pursuant to Section 11.4 of the Agreement for Lease, on demand, and, in the case of clause (vi) above, the fifth Business Day after the expiration of the six month period referred to therein. The Company shall provide prompt written notice to the Administrative Agent (which shall promptly notify the Lenders) of any event that would result in a required prepayment hereunder, and upon delivery of such notice the Company's obligation to prepay the Loans as herein provided shall become irrevocable. All funds received in prepayment of the Loans shall be applied in the priorities set forth in Section 16.4 of the Intercreditor and Security Agreement.

(b) The Company may, upon not less than four Business Days' irrevocable prior notice to the Administrative Agent, prepay any Borrowing in whole or in part at any time, provided that (i) any partial prepayment of a Borrowing must be in a minimum amount of \$1,000,000 or any greater amount which is an integral multiple of \$100,000, (ii) each prepayment must be accompanied by the payment of accrued interest on the amount prepaid to the date of prepayment, (iii) each prepayment shall be applied ratably to the Loans comprising such Borrowing and (iv) each prepayment of a Borrowing comprised of Eurodollar Loans must be accompanied by the payment of any additional amount owing under Section 3.05 hereof. In addition, the Company shall have the obligation to prepay Eurodollar Loans as required in Article III hereof.

Section 2.09. Note Register. The Administrative Agent shall keep a register (the "Note Register") in which provisions shall be made for the registration of Notes and the registration of transfers of Notes made by a Lender. Notwithstanding the foregoing, payments and prepayments of principal of Loans shall be applied first to CP Rate Loans, then to Base Rate Loans and, finally, to Eurodollar Loans.



Section 2.10. Pro Rata Treatment. Except to the extent otherwise provided herein or in the Intercreditor and Security Agreement, payment or prepayment of any Loan and each reduction of the Aggregate Commitment Amount shall be allocated pro rata among the Lenders, without priority of one over the other, in accordance with their outstanding Balance.

Section 2.11. Extension of the Tranche A Maturity Date and Tranche B Maturity Date.

(a) The Company, at the direction of the Lessee, may request up to two (2) extensions of the then current Maturity Date for additional periods of up to sixty (60) months each. Such request shall be in writing and delivered to the Administrative Agent, which shall promptly forward such request to the Lenders and the Hannover Liquidity Purchasers. Such request must be made by the Company not less than one hundred eighty (180) days, nor more than three hundred sixty (360) days, prior to the current Maturity Date. Each Hannover Liquidity Purchaser may grant or deny its consent to any such extension each in its sole discretion by notifying the Company in writing (with a copy to the Lessee) and may condition its consent on adjustment of the Interest Rate and receipt of such financial information, appraisals or other documentation as may be reasonably requested by the Lenders and the Hannover Liquidity Purchasers; provided, however, that any Hannover Liquidity Purchaser that fails to respond to such request within thirty (30) days after its receipt thereof shall be deemed to have denied such request. Upon the Company's receipt of the written consent of each Hannover Liquidity Purchaser to any requested extension of the then current Maturity Date, the Maturity Date shall automatically be extended to the date requested by the Company.

(b) In the event any Hannover Liquidity Purchaser fails to consent or respond to any requested extension of the Tranche A Maturity Date or Tranche B Maturity Date, the Company shall be entitled to replace a Hannover Liquidity Purchaser or Purchasers in connection with an extension request hereunder as provided in Section 11.01 hereof.

### ARTICLE III

#### CHANGE IN CIRCUMSTANCES

Section 3.01. [RESERVED]

Section 3.02. Eurodollar Rate Lending Unlawful. Notwithstanding any other provision herein, if the adoption of or any change in any Applicable Law or in the interpretation or application thereof occurring after the Effective Date shall make it

unlawful for a Lender (or a Hannover Liquidity Purchaser) to make or maintain Eurodollar Loans (or, in the case of Hannover Liquidity Purchasers, of purchasing Percentage Interests therein) as contemplated by this Agreement (a) such Lender (or Hannover Liquidity Purchaser) shall promptly give written notice of such circumstances to the Company and the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (b) the commitment of such Lender (or Hannover Liquidity Purchaser), hereunder to make Eurodollar Loans (or, in the case of Hannover Liquidity Purchasers, of purchasing Percentage Interests therein) shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Loans, such Lender (or Hannover Liquidity Purchaser) shall then have a commitment only to make a Base Rate Loan when a Eurodollar Loan is requested and (c) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of Eurodollar Loans occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Company shall pay to such Lender (or Hannover Liquidity Purchaser) such amounts, if any, as may be required pursuant to Section 3.05. In any such case, interest and principal (if any) shall be payable contemporaneously with the related Eurodollar Loans of the other applicable Lenders.

Section 3.03. Deposits Unavailable. If any of the Lenders (or Hannover Liquidity Purchasers) shall have determined that, with respect to Eurodollar Loans,

(a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to such Lender or Hannover Liquidity Purchaser in its relevant market; or

(b) by reason of circumstances affecting such Lender's or Hannover Liquidity Purchaser's relevant market, adequate means do not exist for ascertaining the interest rate, as the case may be, applicable to such Lender's Eurodollar Loans,

then, upon notice from such Lender (or Hannover Liquidity Purchaser) to the Company, the Administrative Agent and the other Lenders (i) the obligations of the affected Lenders or Hannover Liquidity Purchasers to make Eurodollar Loans (or, in the case of Hannover Liquidity Purchasers, of purchasing Percentage Interests therein) shall be suspended and (ii) each outstanding Loan shall begin to bear interest at the Base Rate on the last day of the then current Interest Period applicable thereto.

Section 3.04. Increased Costs, etc. (a) If the adoption of or any change in any Applicable Law (including any Applicable Law regarding capital adequacy), any accounting principles, or any change in the interpretation, application, or administration

of any of the foregoing, by any central bank or other Governmental Authority charged with the adoption, change, interpretation, application or administration thereof applicable to any Lender (or Hannover Liquidity Purchaser), or compliance by any Lender (or Hannover Liquidity Purchaser) with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case made subsequent to the Effective Date (or, if later, the date on which such Lender becomes a Lender, or on which such Hannover Liquidity Purchaser becomes a Hannover Liquidity Purchaser):

(i) shall subject such Lender to any Tax of any kind whatsoever with respect to any Eurodollar Loans made by it or its obligation to make Eurodollar Loans, or shall subject such Hannover Liquidity Purchaser to any Tax of any kind whatsoever with respect to any Eurodollar Loans made by the Tranche A Lender, or the Tranche B Lender, as the case may be, or its obligation to purchase Percentage Interests in Eurodollar Loans, or change the basis of taxation of payments to such Lender or Hannover Liquidity Purchaser in respect thereof (except for changes in Taxes imposed upon the net income and franchise Taxes (imposed in lieu of such net income tax), of such Lender or Hannover Liquidity Purchaser or its applicable lending office, branch, or any affiliate thereof); or

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan, assessment, insurance charge, or similar requirement against assets held by, deposits or other liabilities in or for the account of, Loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender or Hannover Liquidity Purchaser which is not otherwise included in the determination of the Adjusted Eurodollar Rate hereunder; or

(iii) shall impose on such Lender or Hannover Liquidity Purchaser any other condition (excluding any Tax of any kind) whatsoever in connection with the Operative Documents;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining Eurodollar Loans (or, in the case of Hannover Liquidity Purchasers, of purchasing Percentage Interests therein), or to reduce any amount receivable hereunder in respect thereof, to reduce such Lender or Hannover Liquidity Purchaser's rate of return on capital as a consequence of its obligations relating hereto, or to require any payment calculated by reference to the amount of loans or interests held or interest received by such Lender or Hannover Liquidity Purchaser, as the case may be, then, in any such case, upon notice to the Company from such Lender or Hannover Liquidity Purchaser, the Company shall pay to such Lender or Hannover Liquidity Purchaser on an After Tax Basis, any additional amounts necessary to compensate such Lender or Hannover Liquidity Purchaser for such increased cost or reduced amount receivable. For the

avoidance of doubt, if any change in accounting standards, or the issuance of any pronouncement, release or interpretation, causes or requires the consolidation of all or a portion of the assets and liabilities of Hannover with the assets and liabilities of the Collateral Agent, the Administrative Agent, any Administrative Agent-Related Persons, the Liquidity Agent, any Lender or any Hannover Liquidity Purchaser, such event shall constitute a circumstance on which the affected Lender or Hannover Liquidity Purchaser may base a claim for reimbursement under this Section 3.04. All payments required by this Section 3.04 shall be made by the Company within 10 Business Days after demand by the affected Lender or Hannover Liquidity Purchaser. Notwithstanding anything to the contrary contained herein, the Company shall not be obligated to compensate any Lender or Hannover Liquidity Purchaser for any amounts pursuant to this Section 3.04 attributable to a period of time more than 180 days prior to the giving of notice by such Lender or Hannover Liquidity Purchaser of its intention to seek compensation under this Section 3.04. If any Lender or Hannover Liquidity Purchaser becomes entitled to claim any additional amounts pursuant to this subsection, it shall provide prompt notice thereof to the Company, certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender or Hannover Liquidity Purchaser and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any additional amounts payable pursuant to this clause submitted by any Lender or Hannover Liquidity Purchaser to the Company shall be conclusive in the absence of manifest error. In determining any such amount, such Lender or Hannover Liquidity Purchaser may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

(b) Each Lender or Hannover Liquidity Purchaser shall use its reasonable efforts to reduce or eliminate any claim for compensation pursuant to this Section 3.04, including, without limitation, a change within the United States in the office of such Lender or Hannover Liquidity Purchaser at which its obligations related to this Credit Agreement are maintained if such change will avoid the need for, or reduce the amount of, such compensation and will not, in the reasonable judgment of such Lender or Hannover Liquidity Purchaser, be otherwise disadvantageous to it.

Section 3.05. Funding Losses. The Company agrees to indemnify each Lender (and Hannover Liquidity Purchaser) and to hold each Lender (and Hannover Liquidity Purchaser) harmless on an After Tax Basis, from any loss or expense which such Lender (and Hannover Liquidity Purchaser) may sustain or incur (other than through such Person's own gross negligence or willful misconduct) as a consequence of (a) default by the Company in making a borrowing of, conversion into or continuation of Loans which are Eurodollar Loans or CP Rate Loans after a Notice of Borrowing, Continuation or Conversion has been delivered in accordance with the provisions of this

Agreement, (b) default by the Company in making any prepayment of a Loan which is a Eurodollar Loan or a CP Rate Loan required in accordance with the provisions of this Agreement, (c) the making of a prepayment of Loans which are Eurodollar Loans or CP Rate Loans on a day which is not the last day of an Interest Period with respect thereto or (d) the conversion of a CP Rate Loan or a Eurodollar Loan into a Loan of a different type other than on the last day of an Interest Period. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loan which is a Eurodollar Loan or a CP Rate Loan provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender or Hannover Liquidity Purchaser) which would have accrued to such Lender or Hannover Liquidity Purchaser on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market.

Section 3.06. Capital Adequacy. (a) If the adoption of any Applicable Law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or Hannover Liquidity Purchaser with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, in each case made subsequent to the Effective Date (or, if later, the date on which such Lender becomes a Lender or such Hannover Liquidity Purchaser becomes a Hannover Liquidity Purchaser) has or will have the effect of reducing the rate of return on either Lender's or Hannover Liquidity Purchaser's or their respective parent company's capital by an amount such Lender or Hannover Liquidity Purchaser deems to be material, as a consequence of its commitments or obligations hereunder to a level below that which such Lender or Hannover Liquidity Purchaser or their respective parent company could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's or Hannover Liquidity Purchaser's or their respective parent company's policies with respect to capital adequacy), then, upon notice from such Lender or Hannover Liquidity Purchaser, the Company shall pay to such Lender or Hannover Liquidity Purchaser such additional amount or amounts as will compensate such Lender and its parent company or Hannover Liquidity Purchaser and its parent company for such reduction (it being understood that such parent company shall not be reimbursed to the extent its Subsidiary Lender or Subsidiary Hannover Liquidity Purchaser is reimbursed by the Company in connection with the same or a similar law, rule, regulation, change,

request or directive applicable to such Lender or Hannover Liquidity Purchaser). All payments required by this Section 3.06 shall be made by the Company within 10 Business Days after demand by the affected Lender or Hannover Liquidity Purchaser. Notwithstanding anything to the contrary contained herein, the Company shall not be obligated to compensate any Lender or Hannover Liquidity Purchaser for any amounts pursuant to this Section 3.06 attributable to a period of time more than 180 days prior to the giving of notice by such Lender or Hannover Liquidity Purchaser of its intention to seek compensation under this Section 3.06. If any Lender or Hannover Liquidity Purchaser becomes entitled to claim any additional amounts pursuant to this clause, it shall provide prompt notice thereof to the Company certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender or Hannover Liquidity Purchaser and a reasonably detailed explanation of the calculation thereof (including the method by which such Lender or Hannover Liquidity Purchaser allocated such amounts to the Company). Such a certificate as to any additional amounts payable pursuant to this clause submitted by such Lender or Hannover Liquidity Purchaser to the Company shall be conclusive in the absence of manifest error; provided, however, that the method by which such Lender or Hannover Liquidity Purchaser allocated such amount to the Company must have been applied in good faith and must have been a method generally used by such Lender or Hannover Liquidity Purchaser for such purpose.

(b) Each Lender or Hannover Liquidity Purchaser shall use its commercially reasonable efforts to reduce or eliminate any claim for compensation pursuant to this Section 3.06, including, without limitation, a change in the office of such Lender or Hannover Liquidity Purchaser at which its obligations related to the Operative Documents are maintained if such change will avoid the need for, or reduce the amount of, such compensation and will not, in the reasonable judgment of such Lender or Hannover Liquidity Purchaser, be otherwise disadvantageous to it.

Section 3.07. Survival. The agreements and obligations of the Company in this Article III shall survive the termination of this Agreement or any other Operative Document and the payment of the Loans and of all other Obligations and amounts payable hereunder and under the other Operative Documents.

ARTICLE IV

FEES; PAYMENTS;  
REDUCTION OF COMMITMENTS

Section 4.01. Fees.

(a) Fee Agreement. The Company, or the Lessee on behalf of the Company, shall pay to the Administrative Agent for its account the fees set forth in the fee letter between the Lessee and the Administrative Agent dated April 19, 2006 ("Fee Agreement").

Section 4.02. Manner of Payments. Each payment to be made by the Company under this Agreement or the Fee Agreement shall be made by transferring the amount thereof in Dollars to the Administrative Agent not later than 12:00 p.m. (New York City time) on the date on which such payment shall become due. Each such payment shall be made without any setoff, deduction, counterclaim or withholding of any kind. The Administrative Agent shall have the right to determine the order in which amounts paid by the Company to the Administrative Agent are applied to the amounts then due and payable to the Lenders hereunder, regardless of any application designated by the Company. Any payment received after 12:00 p.m. (New York City time) on any Business Day shall be deemed to have been received on the next following Business Day. Each payment received by the Administrative Agent for the account of the Lenders or any of them shall be promptly distributed in like funds as received by the Administrative Agent to the Lenders entitled to share in such payment ratably in accordance with their entitlement thereto.

Section 4.03. Extension of Payments. If any payment under this Agreement shall become due on a day which is not a Business Day, except as otherwise provided with respect to Eurodollar Loans, the due date thereof shall be extended to the next following day which is a Business Day, and such extension shall be taken into account in computing the amount of any interest or fees then due and payable hereunder.

Section 4.04. Computation of Interest and Fees. All interest and fees payable under this Agreement shall be calculated on the basis of a 360-day year for the actual number of days elapsed at all times that the Interest Rate is determined by reference to the Adjusted Eurodollar Rate or CP Rate and, at all other times, on the basis of a 365- (or 366-, as the case may be) day year for the actual number of days elapsed. Any change in the Interest Rate resulting from a change in the Base Rate, the Adjusted Eurodollar Rate or the CP Rate shall become effective as of the opening of business on the day on which such change becomes effective and the Administrative Agent shall give

the Company and the Lessee prompt notice of any such change. Each determination of the Interest Rate by the Administrative Agent pursuant to any provision of this Agreement or any other Operative Document shall be binding on the Obligors and the Lenders in the absence of manifest error.

Section 4.05. Collateral Account. (a) The Company shall maintain with the Collateral Agent a special purpose demand deposit account (the "Collateral Account") into which there shall be deposited all amounts payable by the Lessee to the Company (other than Excepted Payments) under the Lease and the Agreement for Lease. For this purpose, the Company shall direct the Lessee to pay all amounts payable to the Company (other than Excepted Payments) under the Lease and the Agreement for Lease, and shall direct the Guarantor to pay all amounts payable to the Company under the Guaranty directly to the Collateral Account. The Company shall also deposit in the Collateral Account all other amounts paid to it from any source whatsoever (other than Excepted Payments), including, without limitation, all amounts paid to it in connection with any sale, condemnation or other disposition of any Asset or in connection with any contribution to capital. The Collateral Agent shall invest funds on deposit in the Collateral Account in Permitted Investments in accordance with the requests of the Company or its designee; provided that in instructing the Collateral Agent to make Permitted Investments, the Company or its designee shall select the maturities of its investments such that no investment shall cause the funds available for application in accordance with clause (b) below to be insufficient to pay any amounts specified therein as and when such amounts become due and payable; and provided, further, that the Collateral Agent will make such Permitted Investments only if the investment certificates, instruments and other documents evidencing the Permitted Investments are held in the Collateral Account or any subaccount maintained therein.

(b) The Company agrees that the Collateral Account shall at all times be under the sole dominion and control of the Collateral Agent. The Collateral Agent and the Lenders agree that the Collateral Agent will instruct the Administrative Agent to release funds from the Collateral Account, for application in accordance with the Intercreditor and Security Agreement (as and when requested by the Company in the case of clauses (iii), (iv), (vi), (vii) and (x) below). Subject to the terms of the Intercreditor and Security Agreement, such purposes shall be limited to the following: (i) the payment of interest on the outstanding Loans, (ii) the payment of any other amounts owing to the Administrative Agent, the Collateral Agent, the Liquidity Agent, the Hannover Liquidity Purchasers, or the Lenders under this Agreement or the Operative Documents, (iii) the payment of any fees or other amounts which the Company is obligated to pay to ML Leasing, under the Management Agreement, accounting firms or law firms in connection with the transactions contemplated hereby, in each case as billed to the Company by an invoice, (iv) the making of Permitted Investments, (v) the payment of costs incurred for, and in connection with, the purchase and/or construction of assets as



permitted by Section 8.11 hereof, provided that such costs constitute part of the Acquisition Cost (as defined in the Agreement for Lease) of such assets or constitute costs and expenses of the Company reimbursable by the Lessee pursuant to the Agreement for Lease and such funds were deposited in the Collateral Account specifically for such purpose, (vi) the payment of such other expenses and obligations of the Company incurred in the ordinary course of its business as the Majority Lenders may approve, such approval not to be unreasonably withheld, provided that such expenses or obligations constitute "Additional Rent" within the meaning of the Lease, (vii) the payment of any amounts owing by the Company to the Lessee under the Agreement for Lease or the Lease, (viii) in the case of insurance proceeds deposited in the Collateral Account, as permitted by Section 4.05(c) hereof and (ix) the payment of Distributions as permitted by Section 8.14 hereof.

(c) The proceeds of all insurance on Assets payable to the Collateral Agent shall be deposited in a special purpose account of the Company at the Collateral Agent (which account may, at the option of the Collateral Agent, be the Collateral Account or a subaccount thereof) and shall be applied as provided in the Lease or the Agreement for Lease. Pending application pursuant to the Lease or the Agreement for Lease, such proceeds may be invested in Permitted Investments in accordance with the instructions of the Company, provided that any investment certificates, instruments or other documents evidencing such Permitted Investments are held in such special purpose account.

(d) If an Event of Default has occurred and is continuing, then until all Obligations are paid in full the Collateral Agent may apply funds in the Collateral Account solely to the "Secured Obligations" (as defined in the Intercreditor and Security Agreement).

Section 4.06. Nonreceipt of Funds by the Administrative Agent. Unless the Administrative Agent shall have been notified by a Lender or the Company prior to the date on which such Lender or the Company is scheduled to make payment to the Administrative Agent of (in the case of a Lender) the proceeds of a Loan to be made by it hereunder or (in the case of the Company) a payment to the Administrative Agent for the account of one or more of the Lenders hereunder (such payment being herein called the "Required Payment"), which notice shall be effective upon receipt, that it does not intend to make the Required Payment to the Administrative Agent, the Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date and, if such Lender or the Company (as the case may be) has not in fact made the Required Payment to the Administrative Agent, the recipient(s) of such payment shall, on demand, repay to the Administrative Agent the amount so made available. In addition, the party that failed to make the Required

Payment shall, on demand, pay interest to the Administrative Agent for its own account in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount (i) at the Federal Funds Effective Rate in respect of the first three days of such period and (ii) for each day thereafter at the Federal Funds Effective Rate plus 1% per annum. The obligation to pay interest to the Administrative Agent as provided in the immediately preceding sentence shall, in the case of the Company, be in addition to any obligation to pay default interest in respect of the Required Payment as provided in Section 9.04 hereof.

Section 4.07. [Intentionally Omitted]

Section 4.08. Special Provisions Regarding Purchase Termination Date under the Hannover LAPA. Hannover agrees to provide to the Lessee and the Company written notice of the scheduled Purchase Termination Date under the Hannover LAPA on a day not earlier than one hundred twenty (120) days prior to such date and not later than ninety (90) days prior to such date. Hannover agrees that it shall, promptly upon the request of the Company (which request Hannover shall promptly forward to each of the Hannover Liquidity Purchasers and the Liquidity Agent), which request shall be made on a day not later than sixty (60) days prior to the Purchase Termination Date, request that the period during which funds are available to the Hannover Liquidity Purchasers under the Hannover LAPA be extended from time to time for an additional period as specified in such notice. Hannover agrees that it shall give written notice to the Lessee and the Company of whether such request shall have been granted or denied by the Hannover Liquidity Purchasers under the applicable Hannover LAPA not later than thirty (30) days prior to such Purchase Termination Date.

## ARTICLE V

### CONDITIONS PRECEDENT

Section 5.01. Conditions Precedent to Effectiveness of Section 2.01 (a) and (b). Section 2.01 (a) and (b) of this Agreement shall become effective on and as of the first date (the "Effective Date") on which the following conditions have been satisfied to the satisfaction of the Administrative Agent:

(a) Operative Documents. Each of the Operative Documents shall be in full force and effect, and the Administrative Agent shall have received the Amended

and Restated Guaranty duly executed and delivered by the Guarantor and in form and substance satisfactory to it;

(b) Good Standing Certificate. The Administrative Agent shall have received a certificate from the Secretary of State of Delaware certifying that the Company is in good standing in such state;

(c) Company Certificates. The Administrative Agent shall have received a certificate from the General Partner certifying that attached thereto are true and complete copies of the Limited Partnership Agreement and the Company's Certificate of Limited Partnership filed with the Secretary of State of the State of Delaware;

(d) Lessee Certificates. The Administrative Agent shall have received (i) certificate from the Secretary of State of Wyoming dated as of a date not more than ten days prior to the Effective Date certifying that the Lessee is in good standing in such State; (ii) a certificate from the Secretary or an Assistant Secretary of Lessee certifying (A) as to the incumbency and signature of each officer of the Lessee authorized to execute and deliver this Agreement any other related documents to which the Lessee is a party and any certificate to be furnished pursuant thereto, (B) that attached thereto are true and complete copies of the charter and by-laws of the Lessee as in effect on such date and (C) that attached thereto is a true and complete copy of the resolutions of the Lessee authorizing the execution, delivery and performance of this Agreement any other related documents to which the Lessee is a party and the transactions contemplated thereby, together with a certification by another officer of the Lessee as to the incumbency and signature of such Secretary, Assistant Secretary or designated representative, as the case may be; and (iii) a certificate from an appropriate officer of the Lessee certifying that, to the best knowledge of such officer, the representations and warranties contained in Section 2 of the Lease are accurate and complete in all material respects and that no "Event of Default" or "Potential Default" (as defined in the Lease) has occurred and is continuing under the Lease;

(e) Guarantor Certificates. The Administrative Agent shall have received (i) A certificate from the Secretary of State of South Dakota certifying that the Guarantor is in good standing in such state; (ii) a certificate from the Secretary or an Assistant Secretary of the Guarantor certifying (A) as to the incumbency and signature of the officer of the Guarantor authorized to execute and deliver the Guaranty and any other related documents to which the Guarantor is a party and any certificate to be furnished pursuant thereto, and (B) that attached thereto are true and complete copies of the certificate of incorporation and by-laws of the Guarantor together with a certification by another officer of the Guarantor as to the incumbency and signature of such Secretary or Assistant Secretary, and (iii) a certificate from an appropriate officer of the Guarantor

certifying that, to the best knowledge of such officer, the representations and warranties contained in Section 4 of the Guaranty are accurate and complete in all material respects;

(f) **[Intentionally Omitted]**

(g) Filings. The Administrative Agent shall have received evidence that upon recordation of all applicable Security Documents, (i) all filings necessary to perfect the Collateral Agent's security interest in the Collateral in existence on the date hereof have been made and (ii) the Liens perfected by such filings has priority over any other Liens except for Permitted Liens;

(h) Atlantic LAPA. The Administrative Agent shall have received evidence that the Atlantic LAPA has been terminated;

(i) Fees. The Lessee and the Company shall have paid to the appropriate parties entitled thereto all fees and expenses agreed to be paid on or before the closing;

(j) Representations True. The representations and warranties made under Article VI hereof shall be accurate and complete in all material respects with the same force and effect as though made on and as of such date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be accurate and complete in all material respects as of such earlier date;

(k) No Event of Default. No Event of Default shall have occurred and be continuing, or would result from the making of such Loan;

(l) No Potential Payment Default. No Potential Payment Default shall have occurred and be continuing; and

(m) Additional Documents. The Administrative Agent shall have received such other documents, certificates, financial or other information, or opinions as the Administrative Agent or any Lender reasonably may request.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants to the Administrative Agent and each Lender that:

Section 6.01. Status. The General Partner is a Delaware corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation with full corporate power and authority to carry on its business as presently conducted and to enter into and perform its obligations, under the Limited Partnership Agreement and under each Operative Document to which the Company is or will be a party. The Company (a) is a duly organized and validly existing limited partnership in good standing under the laws of the State of Delaware and (b) has all requisite power and authority to own its properties and conduct its business as presently conducted and to execute and deliver, and to perform its obligations under, this Agreement, the Limited Partnership Agreement and the Operative Documents to which it is a party.

Section 6.02. Compliance with Other Instruments. The execution, delivery and performance of this Agreement and the Operative Documents to which the Company is a party will not (a) violate any existing Applicable Law, rule or regulation or any provision of the General Partner's Certificate of Incorporation or the Company's Certificate of Limited Partnership, (b) conflict with, result in a breach of, or constitute a default under, any terms or provisions of any indenture, mortgage or other agreement or instrument to which the Company is a party or by which it or any of its Assets is bound, or any license, judgment, order or decree of any government, governmental body or court having jurisdiction over the Company or any of its activities or properties or (c) result in, or require the creation or imposition of, any Lien upon or with respect to any properties now or hereafter owned by the Company, except as may be contemplated hereby or thereby.

Section 6.03. Financial Statements. The audited financial statements of the Company furnished to the Lenders on or before the date hereof fairly present the financial position of the Company as of the date thereof. Since the date of such financial statements there has been no material adverse change in the financial condition or business of the Company and no change which would materially impair the ability of the Company to perform its obligations hereunder or under the Operative Documents to which it is a party.

Section 6.04. Litigation. There are no suits, actions or proceedings pending or, to the knowledge of the Company, threatened against or affecting the

Company, which, individually or in the aggregate, could have a material adverse effect on the ability of the Company to perform its obligations hereunder or under any Operative Document to which it is or will be a party. There is no action, suit, proceeding or investigation at law or in equity by or before any Governmental Authority now pending or, to the best knowledge of the Company, threatened against or affecting the Company or any Assets or rights of the Company which, if adversely determined, could reasonably be expected to have a material adverse impact on the financial condition or business of the Company or the rights or remedies of the Collateral Agent or the Lenders hereunder or under the Operative Documents, or materially impair the ability of the Company to perform its obligations hereunder or under the Operative Documents to which it is a party, and there is no action, suit, proceeding or investigation at law or in equity by or before any Governmental Authority now pending or, to the best knowledge of the Company after due inquiry, threatened which questions or could question the validity of this Agreement or any of the other Operative Documents to which the Company is a party.

Section 6.05. Title to Properties; Lien. The Company is the sole owner of and has good title to that portion of the Project located on (i) the Fee Premises and (ii) the Easement Premises free and clear of any Liens, except for Permitted Liens.

Section 6.06. Taxes. The Company has filed all tax returns required to be filed by it. The Company has paid all taxes and other governmental charges due pursuant to such returns or pursuant to any assessment received by the Company, except to the extent any such tax or governmental charge is (i) subject to Permitted Contests or (ii) being contested in good faith by appropriate proceedings. The charges, accruals and reserves on the books of the Company in respect of any taxes or other governmental charges are adequate in the aggregate to provide for the liabilities in respect thereof.

Section 6.07. Pension Plans. The Company has not established, and does not maintain, contribute or have liability with respect to, any employee benefit plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended.

Section 6.08. Investment Company Act. The Company is not an "Investment Company", as defined in the Investment Company Act of 1940, as amended.

Section 6.09. Binding Agreement. Each of this Agreement and the other Operative Documents to which the Company is a party have been duly authorized by all necessary action by the Company and duly executed and delivered by the Company. Each of this Agreement and the other Operative Documents to which the Company is a party constitutes a legal, valid and binding obligation of the Company, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency

and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 6.10. Authorizations. All authorizations, consents, permits, Governmental Actions, approvals, registrations, filings, exemptions and licenses with or from any Governmental Authority which are necessary for the execution and delivery of this Agreement or any Operative Document to which the Company is a party, or for the performance by the Company of its obligations hereunder or thereunder have been effected and obtained and, so long as may be required for the Company to comply with this Agreement or any Operative Document to which the Company is a party, will remain in full force and effect.

Section 6.11. Indebtedness; Other Agreements. Prior to the date hereof, the Company has not created, assumed or incurred any Indebtedness other than the Indebtedness incurred under the Interim Agency Agreement (which has been terminated as of the Documentation Date) or incurred hereunder or permitted hereby and by the Operative Documents. The Company has not entered into any agreement other than (i) the Interim Agency Agreement (which has been terminated as of the Documentation Date) and the Operative Documents to which it is a party and (ii) agreements incidental to the acquisition and construction of the Project pursuant to and in accordance with the Lease and the Agreement for Lease which do not involve the creation, assumption or incurrence by the Company of any Indebtedness.

Section 6.12. Collateral. (a) The Intercreditor and Security Agreement creates a valid and continuing security interest in the Collateral (as defined in the applicable UCC) now existing and described therein, securing the payment of the Obligations. All action necessary to perfect such security interest has been taken and such security interest has priority over any other Lien on such Collateral, except for Permitted Liens.

(b) [RESERVED]

(c) The Lessor Mortgage creates a valid Lien on the Company's interest in the "Land" (as defined therein) and all rent and other amounts payable under the Lease and the Agreement for Lease, in each case securing the payment of the Obligations, the filing of all appropriate Lessor Financing Statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Collateral have been completed, and such Lien has priority over any other Lien on such Collateral, except for Permitted Liens.

(d) Other than the security interest granted to the Collateral Agent pursuant to the Existing Credit Agreement, this Agreement and the Security Documents,

the Company has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral. The Company has not authorized the filing of and is not aware of any financing statements against the Company that include a description of the Collateral other than any financing statement relating to the security interest granted to the Collateral Agent hereunder or that has been terminated.

(e) The Collateral Assignment of the Lessee Mortgage creates a valid Lien on the Lessee Mortgage described therein securing the payment of the Obligations, all action necessary to perfect such Lien has been taken and such Lien will have priority over any other Lien on such Lessee Mortgage, except for Permitted Liens.

Section 6.13. Location of Company. On the date hereof, the Company's mailing address (as that term is defined in § 9-516(b)(5) of the Uniform Commercial Code of the State of New York) is at c/o ML Leasing Equipment Corp., Four World Financial Center, New York, NY 10080, and the Company's location is at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801.

Section 6.14. Regulation T, U or X. The Company will not use the proceeds of any Loan in such a manner as to result in a violation of Regulation T, U and X of the Board of Governors of the Federal Reserve System.

Section 6.15. Compliance with Laws. The Company is in compliance with the requirements of all Applicable Laws of any Governmental Authority (including, without limitation, all Environmental Requirements and all applicable laws, rules, regulations and orders relating to environmental protection, the use and disposal of hazardous substances and building and land use), except those (i) the non-compliance with which would not, either singly or in the aggregate, (A) materially adversely affect any Assets, the financial condition or business of the Company or the rights or remedies of the Lenders hereunder or under the Operative Documents, or (B) impair the ability of the Company to perform its obligations hereunder or under the Operative Documents to which it is a party, or (ii) the compliance with which (A) the Company is contesting in good faith by appropriate proceedings, or (B) is the responsibility of the Lessee under the Agreement for Lease or the Lease.

Section 6.16. Use of Proceeds. No part of the proceeds of any Borrowing requested hereunder will be used to pay, in whole or in part, any Distribution, except as contemplated by the proviso to the last sentence of Section 8.14 hereof.

Section 6.17. Survival. The foregoing representations and warranties of the Company in this Article VI shall survive the execution and delivery of this



Agreement, the consummation of the transactions contemplated hereby and the Effective Date.

## ARTICLE VII

### AFFIRMATIVE COVENANTS

The Company hereby covenants and agrees that until the Obligations have been paid and performed in full and this Agreement shall have terminated:

Section 7.01. Payment of Taxes. The Company will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or properties, prior to the date on which penalties attach thereto, except to the extent that (i) any such tax, assessment, charge or levy is being contested in good faith by appropriate proceedings and for which adequate reserves have been established by the Company or (ii) such tax, assessment, charge or levy is required to be paid or discharged by the Lessee under the Agreement for Lease or the Lease, in which case the Company will use its best efforts to cause the Lessee to comply with the Agreement for Lease and the Lease.

Section 7.02. Keeping of Books and Records, Inspection. The Company will maintain a system of accounting used for federal income tax purposes. Upon reasonable notice from the Administrative Agent or any Lender, the Company will permit the Administrative Agent or such Lender or their representatives to have access to and examine and inspect the books and records and properties of the Company and confer with the officers of the Company, the General Partner and its agents, employees and accountants at any reasonable time and from time to time.

Section 7.03. Notice of Certain Events. The Company will promptly upon obtaining knowledge thereof and in any event not more than three Business Days after obtaining knowledge thereof notify the Administrative Agent and the Lessee of (a) the occurrence of any Event of Default of which it has knowledge, (b) the occurrence of any Potential Default of which it has knowledge or (c) the commencement of any litigation or governmental proceeding affecting the Company or any of its Assets which, if adversely determined, could have a material adverse effect on the financial condition or business of the Company or the rights or remedies of the Collateral Agent or the Lenders hereunder or under the Operative Documents, or which could impair the ability of the Company to perform its obligations hereunder or under the Operative Documents to which it is a party. The Administrative Agent will promptly forward a copy of each notice received by it pursuant to this Section 7.03 to each Lender.

Section 7.04. Financial Statements and Other Information. The Company or the Lessee, as applicable, will deliver to the Administrative Agent (with sufficient copies for each Lender):

(a) as soon as available and in any event within 120 days after the end of each of its fiscal years, (i) an audited balance sheet of the Company at the end of such year and audited statements of income and retained earnings and statements of cash flows of the Company for such year, setting forth in each (other than its first) fiscal year in comparative form the figures for the previous year, and (ii) an audited balance sheet of the Lessee at the end of such year and audited statements of income and retained earnings and statements of cash flows of the Lessee for such year, setting forth in each (other than its first) fiscal year in comparative form the figures for the previous year, in each case with a report thereon satisfactory to the Majority Lenders by Deloitte & Touche or other nationally recognized independent certified public accountants;

(b) simultaneously with the delivery of each set of financial statements referred to in clause (a) of this Section 7.04, a certificate of the Company stating whether there exists on the date of such certificate any Event of Default or Potential Default, and if any Event of Default or Potential Default exists, specifying the nature and period of existence thereof and the action the Company is taking and proposes to take with respect thereto;

(c) promptly upon receipt thereof by the Company, a copy of each notice, document or written communication to the Company from, or given by the Company to, the Lessee or the Guarantor pursuant to the requirements of the Agreement for Lease, the Lease or the Guaranty, as the case may be; and

(d) from time to time, such additional information regarding the financial condition or business of the Company as the Administrative Agent or any Lender may through the Administrative Agent reasonably request.

Section 7.05. Use of Proceeds. The Company will use the proceeds of the Loans only for the purposes enumerated in Section 4.05(b) hereof.

Section 7.06. Compliance with Other Agreements. The Company will perform and observe all of its agreements and covenants in the Agreement for Lease and the Lease. The Company will enforce the Agreement for Lease, the Lease and the other Operative Documents to which the Company is a party in accordance with their respective terms and will, no later than three Business Days after any request therefor by the Administrative Agent or the Majority Lenders (or earlier if necessary to avoid a Potential Default or Event of Default hereunder), exercise such rights, powers and remedies thereunder as the Administrative Agent or the Majority Lenders may request.

In exercising any rights under the Agreement for Lease, the Lease, or the other Operative Documents, the Company will not take any action not directed to be taken in accordance with the preceding sentence that would adversely affect the rights of the Administrative Agent-Related Persons, the Lenders or the Hannover Liquidity Purchasers, provided that the Company may, without the consent of the Administrative Agent or the Majority Lenders, seek indemnification from the Lessee under Section 12 of the Agreement for Lease or Section 11 of the Lease.

Section 7.07. Preservation of Existence. The Company will preserve and maintain its existence, rights, franchises and privileges, except such rights, franchises and privileges which are not material to both (i) the performance of its obligations under this Agreement and the Operative Documents to which it is a party and (ii) the conduct of its business as presently or proposed to be conducted.

Section 7.08. Compliance with Laws. The Company will comply with the requirements of all Applicable Laws (including, without limitation, all Environmental Requirements and all applicable laws, rules regulations, and orders relating to building and land use), of any Governmental Authority, non-compliance with which would, singly or in the aggregate, materially adversely affect any Assets, the financial condition or business of the Company or the rights or remedies of the Lenders hereunder or under the Operative Documents, or which would impair the ability of the Company to perform its obligations hereunder or under the Operative Documents to which it is a party, unless (i) the same shall be contested by the Company in good faith and by appropriate proceedings or (ii) compliance with such Applicable Laws (including, without limitation, all Environmental Requirements and all applicable laws, rules, regulations and orders relating to building and land use) is the responsibility of the Lessee under the Lease or the Agreement for Lease, in which case the Company will use its best efforts to cause the Lessee to comply with the Lease and the Agreement for Lease.

Section 7.09. Use of Certain Lease Payment. The Company will, as promptly as practicable, use all of (a) the proceeds of any sale of the Project corresponding to Acquisition Cost, and (b) the proceeds-payable to the Company, of any loss, destruction, taking or other circumstances referred to in Sections 15(c) and 16(a) of the Lease corresponding to Adjusted Acquisition Cost, for the repayment or prepayment of Loans. Pending the use of such amounts for such purposes, the Company may make Permitted Investments with such amounts.

Section 7.10. Risk Management. The Company may enter into one or more Hedges solely for the purpose of hedging its interest rate risk with respect to Borrowings hereunder; provided that (a) if the aggregate notional amount of all Hedges at any time exceeds the aggregate principal amount of all outstanding Borrowings, then if and to the extent that any of such hedges consist of Swaps, the Company will reduce the

notional amount of such Swaps by an amount equal to the lesser of (i) such excess or (ii) the notional amount of all Swaps then in effect, and (b) the terms and conditions of, and the counterparties party to, each Hedge entered into by the Company will be in form and substance reasonably satisfactory to the Administrative Agent.

Section 7.11. Lease Term. The Company will ensure that the Lease Term (as defined in the Lease) of the Project subject to the Lease does not exceed the economic useful life of such Project as reasonably determined by the Company at the time such Project becomes subject to the Lease.

Section 7.12. Real Estate and Regulatory Documentation Date Deliveries. On or before the Real Estate and Regulatory Documentation Date, the Company will deliver the following to the Administrative Agent, in form and substance satisfactory to the Administrative Agent:

(a) Easements. Any blanket easements contained in the Easement Agreement (as defined in the Agreement for Lease) shall be specifically located, and all easement agreements for the benefit of the Company as are necessary for the construction and operation of the Project over lands adjacent to the Premises, including, without limitation, easements for access to a public road, gas lines, transmission lines, water service, sewer service, coal storage and delivery of coal by conveyors (the "Required Easement Agreements"), together with collateral assignments of such Required Easement Agreements in favor of the Administrative Agent;

(b) Subordination Agreements. Subordination and/or non-disturbance agreements from any lienholders of the lands encumbered by the Required Easement Agreements, in recordable form;

(c) Survey. An American Land Title Association 1999 Class A Survey of the Premises and the lands encumbered by the Required Easement Agreements, certified to the Administrative Agent, the Lenders, the Company and the Title Company;

(d) Title Insurance. An endorsement to the Title Policy for the Premises deleting any Survey exception, adding the lands encumbered by the Required Easement Agreements and containing no additional exceptions not acceptable to the Administrative Agent, subject only to Permitted Liens;

(e) Amended Lessor Mortgage, Assignment of Leases and Rents and Lessor Financing Statements. The Administrative Agent shall have received

amendments reasonably requested by the Administrative Agent, to the Lessor Mortgage, the Assignment of Leases and Rents and the Lessor Financing Statements reflecting the addition of the Required Easement Agreements;

(f) Amended Lease, Agreement for Lease, Memorandum of Lease, Lessee Mortgage and Lessee Financing Statements. The Administrative Agent shall have received amendments reasonably requested by the Administrative Agent, to the Lease, Agreement for Lease, Memorandum of Lease, Lessee Mortgage and Lessee Financing Statements reflecting the addition of the Required Easement Agreements;

(g) Amended Project Contracts. All Project Contracts necessary for the operation and maintenance of the Project, including, without limitation, an agreement for interconnection service and a services and facilities agreement with any neighboring power plants shall be available to the Project on commercially reasonable terms and copies thereof shall have been delivered to the Administrative Agent upon reasonable request; and

(h) Approval of EWG Status. The Company shall have received approval from the appropriate Governmental Authority of its application for EWG status and evidence of such approval shall be delivered to the Administrative Agent, or the Company shall represent and warrant that it has not received, nor is aware or has any knowledge of, any objections to its application for EWG status as of the Real Estate and Regulatory Documentation Date.

## ARTICLE VIII

### NEGATIVE COVENANTS

The Company hereby covenants and agrees that without the prior written consent of all of the Majority Lenders, until the Obligations have been paid and performed in full and this Agreement shall have terminated:

Section 8.01. Change in Nature of Business. The Company will not (a) enter into any business other than the business of (i) acquiring the Premises and constructing the Project and leasing same to the Lessee pursuant to the Agreement for Lease and the Lease and (ii) acquiring assets and leasing such assets to lessees having an unsecured credit rating of A or better by Standard & Poor's Ratings Group and A2 or better by Moody's Investor Services, Inc. on the date of any such lease; provided such

lease is a triple net lease substantially in the form of the Lease, or (b) become a party to any agreement other than this Agreement and the Operative Documents to which it is a party, the other agreements referred to in Section 6.11 hereof and any other agreements specifically contemplated by this Agreement (including subsection 8.01(a)(ii) hereof) and the Operative Documents.

Section 8.02. Investments. The Company will not make any loans or investments or purchase any securities with funds on deposit in the Collateral Account, except direct obligations of the United States of America, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States of America, or any agency thereof, in either case maturing not more than 90 days from the date of acquisition thereof, and interest-bearing time deposits at the Administrative Agent ("Permitted Investments") so long as the ability to make payments under Section 4.05 is not impaired. All earnings on Permitted Investments shall be credited to the Collateral Account upon receipt thereof by the Administrative Agent.

Section 8.03. Liens. The Company will not create, incur, assume or permit to exist any Lien upon the Project or any of the Collateral, other than the following Permitted Liens: (a) Liens for taxes, assessments, charges or other governmental levies not delinquent or which are being contested in good faith by appropriate proceedings; (b) mechanics', worker's, materialmen's, operators', carriers', or other like Liens arising in the ordinary and normal course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings; (c) Liens created by the Security Documents; (d) Permitted Liens as defined in the Agreement for Lease or the Lease and Liens, the existence of which does not constitute an Event of Default (as such term is defined in the Agreement for Lease or the Lease); and (e) Liens not created by the Company or the Lessee which are promptly contested in good faith and by appropriate proceedings and which are discharged or bonded to the satisfaction of the Company within 30 days after notice thereof to the Company.

Section 8.04. Other Indebtedness. The Company will not create, assume, incur, suffer to exist or otherwise become or remain liable in respect of any Indebtedness other than the Loans and other Obligations.

Section 8.05. Consolidations, Mergers, etc. The Company will not merge with or into, or consolidate with, any other Person.

Section 8.06. Sales of Assets. The Company will not sell, transfer, liquidate or otherwise dispose of the Project or any of the Collateral except that (a) the Project may be leased, transferred or otherwise disposed of as contemplated by the Lease or the Agreement for Lease, provided the proceeds thereof are paid directly to the

Collateral Account and (b) other assets permitted to be acquired and leased by the Company pursuant to Sections 8.01(a)(ii) and 8.11(a) hereof may be leased, transferred and disposed of in accordance with the terms of the lease and related documents required to be entered into in connection therewith.

Section 8.07. Pension Plans. The Company will not establish or become party to any employee benefit plan of the type referred to in Section 6.07 hereof.

Section 8.08. Location of Company. The Company will not maintain its principal place of business and chief executive office at any place other than the place specified in Section 6.13 hereof unless it shall have given the Administrative Agent not less than 10 days' prior written notice of such change of location.

Section 8.09. Change of Manager. The Company will not permit anyone other than ML Leasing or an Affiliate thereof to provide the services to be provided to the Company under the Management Agreement.

Section 8.10. Amendments, etc. Except as provided in Section 11.03 hereof, the Company (a) will not terminate, amend or modify any provisions of, or give any consent, grant any waiver or extension or exercise any remedy under, any Operative Documents or the Construction Documents, provided that the Company may without the consent of the Lenders (but upon prompt notice to the Administrative Agent) seek indemnification from the Lessee under the Lease and the Agreement for Lease and permit modifications to the Construction Documents in accordance with the terms of the Agreement for Lease and (b) will not terminate, amend or modify any material provisions of the Limited Partnership Agreement, except to provide for (i) the admission of additional limited partners to the Company, (ii) the sale by the limited partners of the Company of their limited partnership interests in the Company or (iii) administrative changes that could not adversely affect the interests of any Lender, provided that the Company shall provide prompt written notice to the Administrative Agent of any such administrative change.

Section 8.11. Acquisition of Assets. (a) The Company will not acquire any Assets other than (i) Assets to be acquired and constructed pursuant to the Agreement for Lease and Construction Documents (as defined in the Agreement for Lease) which are described on Schedule II hereto, (ii) with respect to Assets to be acquired and leased as permitted by Section 8.01(a)(ii) hereof, real property assets and items of personal property related thereto substantially similar to the Permitted Assets and (iii) Permitted Investments.

(b) The Company will not acquire any Asset subject to the Lease, or finance or refinance the acquisition of any such Asset, unless the Lessee and the

Company shall have executed a mortgage with respect to such Asset and a copy thereof shall have been delivered to the Administrative Agent.

Section 8.12. Total Outstanding. The Company will not permit the sum of the aggregate principal amount of all Outstanding Loans to exceed the sum of (x) 97% of the aggregate Acquisition Cost (as defined in the Agreement for Lease) of all Assets then subject to the Agreement for Lease and (y) the amount then on deposit in the Collateral Account.

Section 8.13. Advances under the Agreement for Lease. The Company will not make an Advance under the Agreement for Lease unless the conditions precedent to such Advance have been satisfied or waived with the approval of the Administrative Agent.

Section 8.14. Distributions. The Company will not make any distributions or return of capital of any kind to any of the Partners or pay any fees to the General Partner (each a "Distribution") if at the time or after giving effect to the proposed Distribution, a Payment Default shall have occurred and is continuing. Notwithstanding anything to the contrary contained herein or in any Operative Documents, no return of any capital to the Partners shall be made at any time unless the Notes, and all the amounts due the Lenders hereunder, have been paid in full; provided, however, that in connection with the making of the Final Advance under the Agreement for Lease, the Company may use the proceeds of the Borrowing made in connection therewith to return capital to the Partners such that after giving effect thereto the Capital Contributions of the Partners shall be equal to 3.6% of the Acquisition Cost.

Section 8.15. Partners' Equity. The Company will not permit the aggregate funded amount of the Partners' total commitments to be less than 3.0% of the Company's total capitalization at any time, all as determined in accordance with generally accepted accounting principles.

## ARTICLE IX

### EVENTS OF DEFAULT

Section 9.01. Events of Default. If any one or more of the following events (an "Event of Default") shall occur and be continuing, the Administrative Agent, on behalf of the Lenders, shall be entitled to exercise the remedies set forth in Section 9.02 hereof:



(a) Any representation or warranty made or deemed made by the Company in this Agreement or the Operative Documents to which it is a party, or any certificate, financial statement or other document delivered pursuant hereto or thereto shall not be accurate and complete in any material respect on any date as of which made or deemed made; or

(b) Failure of the Company to pay (i) the principal of any Loan within 5 Business Days of the date when due, (ii) any interest or fee payable hereunder or under the Fee Agreement within five (5) Business Days of the date when due or (iii) any other amount payable hereunder or under any Operative Document to which the Company is a party if the failure to pay such other amount continues for ten (10) Business Days after receipt of notice thereof; or

(c) Default in the performance or observance of any covenant or obligation contained in Section 7.03 (other than 7.03(c)), 7.05, 7.06 (with respect to the last sentence thereof only), 7.07, 7.08, 7.09, 7.11 or in Article VIII hereof; or

(d) Default in the performance or observance of any other covenant or obligation of the Company pursuant to this Agreement or any other Operative Document to which it is a party and the continuance of such default for 45 days after written notice from the Administrative Agent; or

(e) The Company shall default in the payment when due of any principal of or premium (if any) or interest on any Indebtedness (other than Indebtedness owing to the Lenders under this Agreement) and such default shall continue beyond any applicable grace period, or shall fail to observe or perform any terms of any instrument pursuant to which any such Indebtedness was created or of any mortgage, indenture or other agreement relating thereto if the effect of such failure is to cause or permit the acceleration of such Indebtedness and such failure shall not have been waived pursuant thereto; or

(f) The entry of a decree or order for relief in respect of the Company by a court having jurisdiction in the premises, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs in any involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the commencement against the Company of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of sixty (60) consecutive days; or

(g) The commencement by the Company of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by it to the entry of an order for relief in an involuntary case under any such law or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors, or the failure of the Company generally to pay its debts as such debts become due or the taking of any action in furtherance of any of the foregoing; or

(h) A Lease Event of Default shall occur and be continuing; or

(i) Any of the Collateral shall be attached for execution or become subject to the order of any court or any other process for execution and attachment and such attachment, order or process shall remain in effect and undischarged for thirty (30) days; or

(j) One or more judgments for the payment of money with respect to which the Company is not indemnified or insured under the Lease or the Agreement for Lease shall be rendered against the Company in an aggregate amount in excess of \$10,000 and the same shall remain undischarged for a period of forty five (45) days during which execution of such judgment shall not be effectively stayed; or

(k) The Lease, the Guaranty, the Ground Lease, the Lessor Mortgage, the Intercreditor and Security Agreement, the Lessee Mortgage, the Assignment of Leases and Rents or the Collateral Assignment shall cease to be in full force and effect; or

(l) The representations contained in Section 6.12 hereof shall at any time become untrue;

or

(m) The Collateral Account shall be attached for any reason or payments therefrom shall be subject to a temporary, preliminary or permanent injunction or restraining order (except to the limited extent permitted pursuant to clause (f) of this Section 9.01); or

(n) Any representation or warranty made or deemed made by the Guarantor in the Guaranty, any Operative Document to which it is a party, or any certificate or other document delivered pursuant thereto shall not be accurate and complete in any material respect on any date as of which it is made or deemed made; or

(o) The Guarantor shall fail to perform or observe any agreement or covenant contained in the Guaranty; or

(p) An "early termination date" (as defined in any Swap) shall occur under such Swap.

Section 9.02. Default Remedies. If any Event of Default shall occur and be continuing, then and in every such event, and at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Majority Lenders shall, by written notice to the Company and each Lender, take one or more of the following actions: (a) reduce the Commitments to zero and (b) declare the Obligations to be forthwith due and payable, whereupon the Obligations shall become forthwith due and payable both as to principal and interest together with all other amounts payable by the Company under this Agreement which may be due or accrued and unpaid, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived; provided, however, that if any Event of Default set forth in paragraph (f) or (g) of Section 9.01 hereof shall occur with respect to the Company, then without any notice to the Company or any other act by the Administrative Agent or any other Person (i) the Commitments shall be immediately reduced to zero, and (ii) the Obligations shall become forthwith due and payable, all without presentment, demand, protest or notice of any kind, all of which are expressly waived. In the event the Obligations shall become due and payable, the Administrative Agent and the Collateral Agent may enforce their rights hereunder, under the Operative Documents and under any other instrument or agreement delivered in connection herewith or therewith and take any other action to which it is entitled hereunder, thereunder, or by law, whether for the specific performance of any covenant or agreement contained in this Agreement, in any such instrument or agreement or to enforce payment as provided herein, therein, or by law.

Section 9.03. Setoff. (a) The Administrative Agent and each Lender is hereby authorized at any time and from time to time, upon the occurrence and during the continuance of any Event of Default, without prior notice to the Company, to the fullest extent permitted by law, to set off and apply any and all balances, credits, deposits (general or special time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Administrative Agent or any Lender at any of its branches or affiliates to or for the account of the Company against any and all of the amounts owing by the Company under this Agreement or the Operative Documents to which it is a party, whether or not the Administrative Agent or any Lender shall have made any demand hereunder or thereunder. The rights of the Administrative Agent and each Lender under this Section 9.03 are in addition to, and do not derogate from or impair, other rights and remedies (including, without limitation, other rights of setoff) which any of them may have.

(b) Each Lender agrees that if it shall, by exercising any right of setoff or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to any Tranche A Note or Tranche B Note held by it which is greater than the proportion received by any other Lender in respect of the aggregate amount of its principal and interest due with respect to any Tranche A Note or Tranche B Note, respectively, held by such other Lender, the Lender receiving such proportionately greater payment shall purchase participations in the Tranche A Notes or Tranche B Notes, as the case may be, held by the other Lenders and such other adjustments shall be made as may be required so that all such payments with respect to the principal and interest with respect to the Notes held by the Lenders shall be shared by the Lenders pro rata. The Company agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in a Note, whether or not acquired pursuant to the foregoing arrangements, may exercise rights of setoff or counterclaims and other collection rights with respect to such participation as fully as if such holder of a participation were a direct creditor of the Company in the amount of such participation.

Section 9.04. Default Interest. Notwithstanding any other provision of this Agreement to the contrary, if the Company shall fail to pay when due any amount owing to the Administrative Agent or any Lender under this Agreement or under the Fee Agreement, then to the extent permitted by law the Company will pay to the Administrative Agent or such Lender, as the case may be, on demand interest on the amount in default from the date such payment became due until payment in full at a rate equal to the Overdue Rate.

## ARTICLE X

### THE ADMINISTRATIVE AGENT

Section 10.01. Appointment and Authorization. Each Lender hereby irrevocably (subject to Section 10.09) appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and the Operative Documents and to exercise such powers and perform such duties as are expressly delegated to it herein or therein, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in the Operative Documents, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Operative Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "administrative agent" in this Agreement with

reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or the Operative Documents by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

Section 10.03. Liability of Administrative Agent. None of the Administrative Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or the Operative Documents or the transactions contemplated hereby or thereby (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by the Company, the Lessee, the Guarantor, any Affiliate of either thereof, or any officer thereof, contained in this Agreement or in any Operative Documents, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection herewith or therewith, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any Operative Documents, or for any failure of the Company, the Lessee, the Guarantor or any other party to any Operative Document to perform its obligations hereunder or thereunder. No Administrative Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any Operative Document, or to inspect the properties, books or records of the Company, the Lessee, or any Affiliate of either thereof.

Section 10.04. Reliance by Administrative Agent. (a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Company), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any Operative Document unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the

Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Operative Document in accordance with a request or consent of the Majority Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 5.01 hereof, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders.

Section 10.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Potential Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender, the Company or the Lessee referring to this Agreement, describing such Potential Default or Event of Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Potential Default or Event of Default as may be requested by the Majority Lenders in accordance with Article IX; provided, however, that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Potential Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 10.06. Credit Decision. Each Lender acknowledges that none of the Administrative Agent-Related Persons has made any representation or warranty to it, and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Company or the Lessee, shall be deemed to constitute any representation or warranty by any Administrative Agent-Related Person to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon any Administrative Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Company, the Lessee and the Guarantor, the value of and title to any Collateral, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Company hereunder. Each Lender also represents that it will,

independently and without reliance upon any Administrative Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the Operative Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Company, the Lessee or the Guarantor. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Administrative Agent, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Company, the Lessee or the Guarantor which may come into the possession of any of the Administrative Agent-Related Persons.

Section 10.07. Indemnification of Administrative Agent. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent-Related Persons (to the extent not reimbursed by or on behalf of the Company, the Lessee or the Guarantor and without limiting the obligation of the Company, the Lessee or the Guarantor to do so), ratably in accordance with their respective Commitment Percentage, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to the Administrative Agent-Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any Operative Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Company, the Lessee or the Guarantor. The undertaking in this Section 10.07 shall survive the payment of all Obligations hereunder and the resignation or replacement of the Administrative Agent.

Section 10.08. Administrative Agent in Individual Capacity. The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Company, the Lessee and their respective Subsidiaries and Affiliates as though it were not the Administrative Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding the Company, the Lessee, the Guarantor

or their Affiliates (including information that may be subject to confidentiality obligations in favor of the Company, the Lessee or the Guarantor) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, the Administrative Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" may include Credit Lyonnais New York Branch in its individual capacity.

Section 10.09. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to the Lenders and the Company. If the Administrative Agent resigns under this Agreement, the Majority Lenders shall appoint a successor administrative agent for the Lenders. Provided no Event of Default has occurred and is continuing, the Lessee and the Company shall have the right to consent to any such appointment, which consent shall not be unreasonably withheld, conditioned or delayed. If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Company, a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article X and Section 11.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Majority Lenders appoint a successor administrative agent as provided for above.

Section 10.10. [RESERVED]

Section 10.11. Collateral Matters. (a) The Administrative Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Security Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Security Documents.



(b) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and payment in full of all Loans and all other Obligations known to the Administrative Agent and payable under this Agreement or any Operative Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which the Company owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to the Company under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by the Company to be renewed or extended; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; or (vi) if approved, authorized or ratified in writing by the Majority Lenders or all the Lenders, as the case may be, as provided in Section 11.03 hereof. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 10.11(b), provided that the absence of any such confirmation for whatever reason shall not affect the Administrative Agent's rights under this Section 10.11.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.01. Replacement of Hannover Liquidity Purchasers. If a Hannover Liquidity Purchaser (i) does not, when requested pursuant to Section 2.11 hereof and in accordance with the applicable Hannover LAPA, consent to an extension of the Tranche A Maturity Date and/or Tranche B Maturity Date, as the case may be, (ii) is unable to make or maintain Eurodollar Loans pursuant to Section 3.02, (iii) no longer has an obligation to make Loans as Eurodollar Loans pursuant to Section 3.03, (iv) is subject to increased costs pursuant to Section 3.04, (v) is owed or reasonably anticipates being owed additional amounts pursuant to Section 3.06, (vi) has elected not to extend its Purchase Termination Date when requested pursuant to Section 4.08(a) hereof and in accordance with the applicable Hannover LAPA, or (vii) has its short-term debt ratings by any Rating Agency cease to be at least equal to both A-1 from S&P and P-1 from Moody's under the applicable Hannover LAPA, unless prior to such date, such Hannover Liquidity Purchaser shall have assigned its rights and obligations hereunder to an eligible assignee pursuant to the requirements of the applicable Hannover LAPA or shall otherwise have made fronting or other arrangements acceptable to the Liquidity Agent and the relevant rating agencies, then in any such event the Company, at the direction of the Lessee, shall have the right, if no Event of Default has occurred and is continuing, to

require the applicable Lender to instruct the applicable Liquidity Agent to exercise its right to replace such Hannover Liquidity Purchaser with another Qualified Financial Institution selected by the Company, at the direction of the Lessee, and reasonably acceptable to the Administrative Agent and the Liquidity Agent (the "Replacement Liquidity Purchaser"), provided that (A) the Replacement Liquidity Purchaser shall unconditionally offer in writing (with a copy to the Administrative Agent, the Liquidity Agent and the Company) to purchase all of the affected Hannover Liquidity Purchaser's rights and obligations under the applicable Hannover LAPA, if any, without recourse or expense to, or warranty by, the Hannover Liquidity Purchaser being replaced, for a purchase price equal to the outstanding amounts (including accrued interest) owing to the replaced Hannover Liquidity Purchaser, (B) the Replacement Liquidity Purchaser executes an Assignment of Liquidity Asset Purchase Commitment (as defined in the applicable Hannover LAPA) with respect to the rights and obligations being acquired by the Replacement Liquidity Purchaser, (C) the Replacement Liquidity Purchaser satisfies the requirements for assignability set forth in the applicable Hannover LAPA, and (D) the Replacement Liquidity Purchaser acknowledges and agrees to the terms and provisions of this Agreement by executing an instrument in form and substance satisfactory to the parties hereto. Notwithstanding anything to the contrary herein contained, if any event described in clauses (iii) and (iv) above affects Hannover Liquidity Purchasers representing 50% or more of the Purchase Commitments, no replacement shall be permitted hereunder. No Sponsor of Hannover may be replaced pursuant to the terms of this Section 11.01 unless and until the entire interest of Hannover in the Loans and under the Operative Documents shall have been transferred to a Qualified Financial Institution in accordance with Section 11.02 hereof.

Section 11.02. Assignment.

(a) The Company may not assign its rights or obligations under this Agreement without the prior written consent of the other parties hereto, which consent may be given or withheld in the sole and absolute discretion of each such party. Any Lender may, in accordance with Applicable Law, and with the prior written consent of the Administrative Agent, the Company and the Lessee (which consents will not be unreasonably withheld), at any time assign to any Lender or to one or more Qualified Financial Institutions (each an "Assignee"), its rights and obligations under this Agreement pursuant to an Assignment Agreement between such Assignee and such transferor Lender, provided that (i) upon the occurrence and during the continuance of an Event of Default, any assignment by a Lender pursuant to this Section 11.02(a) shall not require the consent of the Company or the Lessee, (ii) any assignment to a Lender or an Affiliate of a Lender that is a Qualified Financial Institution shall not require the consent of the Company or the Lessee, and (iii) any partial assignment to an Assignee that is not an existing Lender shall be in a minimum amount of \$10,000,000 in the case of Tranche A Loans, or such lesser amount as the Lender shall hold. Such Assignment

Agreement shall be executed by such Assignee and such transferor Lender and shall be delivered before the proposed effective date of such assignment to the Administrative Agent for acceptance by it, the Company and the Lessee (if required by the terms hereof) together with, except for an assignment pursuant to the last sentence of this Section 11.02 (a), an assignment fee of \$3,500, which fee shall be payable to and retained by the Administrative Agent. Upon such execution, delivery, acceptance and consent, from and after the effective date specified in such Assignment Agreement, (x) the Assignee thereunder shall be a party hereto and, to the extent of the portion of the Commitment and Loans of the transferor Lender purchased by it, have the rights and obligations of a Lender hereunder and (y) the transferor Lender thereunder shall, to the extent of the portion of its Commitment and Loans so sold, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of a transferor Lender's rights and obligations under this Agreement, such transferor Lender shall cease to be a party hereto). On or prior to the effective date specified in such Assignment Agreement, the Company, at the expense of the transferor Lender, shall execute and deliver to the Administrative Agent, in exchange for the Notes previously delivered to such transferor Lender, new Notes to the order of such Assignee in an amount based upon the Commitment assumed by it pursuant to such Assignment Agreement and, unless the transferor Lender has not retained a Commitment hereunder, new Notes to the order of the transferor Lender in an amount based upon the Commitment retained by it hereunder. Each such new Note shall be dated the effective date of such assignment and shall otherwise be in the form of the Note replaced thereby. The Notes surrendered by the transferor Lender shall be promptly returned by the Administrative Agent to the Company. Subject to the foregoing, all provisions contained in this Agreement or any document or agreement referred to herein or relating hereto shall inure to the benefit of, and shall be binding upon, the Company, the Administrative Agent, the Lenders and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement, any Lender may pledge, hypothecate or otherwise grant a security interest in all or any part of its rights hereunder or under its Notes to any Federal Reserve Bank; provided that no such pledge, hypothecation or grant shall relieve such Lender of any of its obligations under this Agreement.

(b) Any Lender may from time to time change the Lending Office of such Lender at which the Loans are made or carried; provided that, unless an Event of Default has occurred and is continuing, if at the time of any change from one Lending Office to another the effect thereof would be to increase any amount payable by the Company under this Agreement then such change shall not be made without the prior written consent of the Company and the Lessee unless such Lender agrees that neither the Company nor the Lessee shall be liable for such additional amount.

Section 11.03. Amendments and Waivers. Except as expressly provided elsewhere in this Agreement, any provision of this Agreement or any Operative Document may be amended or waived if, but only if, such amendment is signed by the Company and the Administrative Agent or, if either such party is not a party to such Operative Document, with its written consent and the waiver is in writing and is signed by the party granting the waiver, with the consent of and on behalf of the Majority Lenders; provided that no such amendment or waiver shall, unless signed by all the affected Lenders and/or Hannover Liquidity Purchasers, (i) increase the amount of any Commitment or the Commitment Percentage of any Lender or Hannover Liquidity Purchaser or subject any Lender or Hannover Liquidity Purchaser to any additional obligation, (ii) reduce the principal of or rate of interest on any Loan or any fees hereunder, (iii) postpone the date fixed for any payment of principal of or interest on any Loan or any fees hereunder or for any reduction or termination of any Commitment, (iv) change the percentage of the aggregate Commitment Percentages which shall be required for the Lenders and/or Hannover Liquidity Purchasers or any of them to take any action under this Section 11.03 or any other provision of this Agreement, (v) amend this Section 11.03, (vi) release all or any substantial portion of the Collateral, (vii) change the definition of Tranche A Loan Commitment or Tranche B Loan Commitment or Section 2.01 hereof, (viii) reduce the amount or postpone the time fixed for the payment of any amount payable under the Agreement for Lease or the Lease (including, without limitation, purchase price, rent, additional rent and all other amounts of any kind whatsoever), (ix) impair the absolute and unconditional nature of the Lessee's obligations under the Agreement for Lease or the Lease, (x) impair the absolute and unconditional nature of the Guarantor's obligations under the Guaranty, (xi) amend or modify any yield protection or indemnity provision under the Operative Documents which inures to the benefit of the Lenders, (xii) amend Schedule II hereto, any defined term set forth thereon or any term or provision of any Operative Document used in the definition of any such defined term or (xiii) amend or modify any provisions of the Shortfall Agreement. Notwithstanding the foregoing, the Administrative Agent may, from time to time, without the consent of any of the Lenders or Hannover Liquidity Purchasers, grant minor waivers of an administrative nature to the Company or the Lessee so long as such waivers would not have any material adverse effect upon the Lenders' and Hannover Liquidity Purchasers' rights and remedies under this Agreement or any of the Operative Documents. Any waiver made pursuant to the previous sentence shall be binding upon the Lenders and Hannover Liquidity Purchasers upon delivery of an executed or conformed copy of such waiver to the Lenders and Hannover Liquidity Purchasers.

Section 11.04. Notices. All notices, requests, demands and other communications to any party hereunder shall be in writing (including telecopier or similar writing) and shall be given to such party at its address or telecopier number set

forth below or such other address or telecopier number as such party may hereafter specify by notice to the other parties listed below.

If to the Administrative Agent:           Calyon New York Branch  
1301 Avenue of the Americas  
New York, New York 10019  
Attention:     Martin C. Livingston  
Telecopier:    212-261-3421  
Telephone:     212-261-7891

If to any Lender or  
Liquidity Purchaser:                   at the address set forth on Schedule VI hereto or in the  
assignment pursuant to which such Lender or Liquidity  
Purchaser became a party hereto

If to the Company:                       Wygen Funding, Limited Partnership  
c/o ML Leasing Equipment Corp.  
Four World Financial Center  
New York, NY 10080  
Attention: Natalya Anbinder  
Telecopier: (212) 449-4246  
Telephone: (212) 449-7113

with copies to:                         ML Leasing Equipment Corp.  
Four World Financial Center  
New York, NY 10080  
Attention: Natalya Anbinder  
Telecopier: (212) 449-4246  
Telephone: (212) 449-7113

and

The Lessee at the address provided below.

If to the Lessee:                         Black Hills Wyoming, Inc.  
625 Ninth Street  
Rapid City, South Dakota 57709  
Attention:     Garner Anderson  
Telecopier:    (605) 721-2597  
Telephone:     (605) 721-2311

Each such notice, request or other communication shall be effective (i) if given by telecopier or other form of facsimile transmission, when transmitted in legible form by facsimile (provided that any such notice transmitted by facsimile by the Company shall be followed promptly by delivery of a hard copy thereof by hand delivery U.S. mail or overnight courier), (ii) if given by overnight courier, one Business Day after delivery to a materially recognized courier service specifying overnight delivery, such notice is delivered for overnight (next-day) delivery or (iii) if given by U.S. mail on the third Business Day after the date deposited, postage prepaid, in the U.S. mail.

Section 11.05. General Indemnification.

(a) Expenses, Indemnification. The Company agrees to pay all reasonable out-of-pocket costs and expenses, including reasonable Attorney Costs, incurred by the Administrative Agent in connection with (i) the preparation, execution and delivery of this Agreement and the Operative Documents and any amendments and waivers hereof or thereof, (ii) the administration of this Agreement and the Operative Documents, (iii) the filing of financing statements, (iv) the recording of any Mortgage and (v) the defense of any security interest granted to the Collateral Agent by the Company. The Company also agrees to pay all out-of-pocket costs and expenses, including Attorney Costs, incurred by the Administrative Agent, each Lender and each Hannover Liquidity Purchaser in connection with the enforcement of this Agreement or any of the Operative Documents and the collection of any amounts owing hereunder or thereunder. In addition, the Company will indemnify each Indemnitee on an After Tax Basis, against, and within five (5) days after demand therefor reimburse any Indemnitee for, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnitee in any way relating to or arising out of this Agreement or any Operative Document or the transactions contemplated hereby or thereby, including without limitation, any and all matters described in Section 12 of the Agreement for Lease and Section 11 of the Lease (collectively, "Indemnified Liabilities"); provided, however, that to the extent any claim relates to a matter which is the subject of the indemnity provisions of Section 12 of the Agreement for Lease or Section 11 of the Lease, the Indemnitees' rights to indemnification hereunder will be, to the extent applicable, subject to the same exclusions set forth in Section 12 of the Agreement for Lease or Section 11 of the Lease; provided, further, that the Company shall not be liable to an Indemnitee for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of any Indemnitee. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 11.05 shall survive the termination of this Agreement.

(b) Taxes. (1) Any and all payments to or for the benefit of the Lenders or the Hannover Liquidity Purchasers (including payments of principal and

interest under the Notes), and the Administrative Agent shall be made free and clear of and without deduction for any and all present or future Taxes. If the Company, the Administrative Agent, Hannover or any other Person (each an "Applicable Payor") shall be required by Law to deduct any such Taxes from or in respect of any amounts payable under this Agreement or any other related document to or for the benefit of a Lender, a Hannover Liquidity Purchaser or Hannover (each an "Applicable Payee"), (A) the amounts payable by such Applicable Payor (as interest or otherwise) shall be increased by the amount necessary so that, after making all required deductions (including deductions applicable to additional sums payable under this Section 11.05(b)), the Applicable Payee shall receive an amount equal to the sum it would have received had no such deductions been made (provided that the Applicable Payor shall not be required to pay such increase until the Applicable Payee has delivered the items specified in clause (6) below (and it has been passed on to the Company), to the extent applicable) (B) the Applicable Payor shall make such deductions and (C) the Applicable Payor shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with all Applicable Laws. The Company will indemnify each Applicable Payor on an After-Tax Basis within five (5) days after demand for the full amount of any sums paid by such Applicable Payor pursuant to the second sentence of this Section 11.05(b)(1) and any liability the Applicable Payor may incur or be required to pay in connection with the provisions of this Section 11.05(b)(1). In no event shall the Company be required to pay Taxes imposed on the overall net income of any Tax Indemnitee (and franchise taxes imposed in lieu of net income taxes) by the jurisdiction under the laws of which such Tax Indemnitee is organized (or its principal office with respect to its activities under this Agreement or the Operative Documents) or any political subdivision thereof and by the jurisdiction of any Lender's or Hannover Liquidity Purchaser's Applicable Lending Office or any political subdivision thereof, but only in the case of any Lender or Hannover Liquidity Purchaser to the extent that such Tax is determined solely on the basis that such Lender or Hannover Liquidity Purchaser, as the case may be, is a creditor entitled to receive only payments of principal, stated interest and stated original issue discount for such Tax purposes.

(2) In addition, the Company agrees to pay all Other Taxes.

(3) (i) Except as otherwise provided in Section 11.05(b)(1), the Company shall indemnify and hold harmless each Tax Indemnitee on an After Tax Basis for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 11.05(b)) paid by such Tax Indemnitee or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Such Tax Indemnitee shall give written notice to the Company within 30 days after such Tax Indemnitee has actual knowledge of the imposition of any Taxes or Other Taxes; provided that failure to so notify the Company

shall not alter such Tax Indemnitee's rights under this Section 11.05(b) except to the extent such failure precludes or materially adversely affects the ability to conduct a contest of the indemnified Taxes. Payments by the Company pursuant to this indemnification shall be made within 30 days from the date such Tax Indemnitee makes written demand therefor (submitted through the Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

(ii) With respect to any payment request made by any Tax Indemnitee pursuant to the Tax indemnity set forth in clause (i) above, if the Company shall request, such Tax Indemnitee shall in good faith contest the Governmental Authority's imposition of or the amount of any such requested amount, keep the Company reasonably informed in respect thereof and consult in good faith with the Company's counsel regarding such contest (provided that the decisions regarding what actions are to be taken shall be made by the Tax Indemnitee in its sole judgment), and shall not compromise or otherwise settle such contest without the Company's consent; provided that such Tax Indemnitee may in its sole discretion select the forum for such contest and determine whether any such contest shall be by resisting payment of such amount, by paying such amount under protest or by paying such amount and seeking a refund thereof; provided, further, that such Tax Indemnitee shall not be required to contest any claim unless (x) after request by such Tax Indemnitee, the Company has delivered to such Tax Indemnitee an opinion of independent tax counsel selected by such Tax Indemnitee and reasonably acceptable to the Company to the effect that a reasonable basis exists to contest such claim, (y) such Tax Indemnitee shall have received from the Company, in such form as such Tax Indemnitee shall deem satisfactory, indemnification for any and all actual or anticipated liability, loss, cost or expense arising out of or relating to such amount or the contest thereof, including, but not limited to, all legal and accountants' fees and expenses, penalties, interest and additions to Taxes or Other Taxes, and (z) if the contest shall be conducted in a manner requiring the payment of all or part of such amount, the Company shall have paid the amount required.

(4) Within 30 days after the date of any payment of Taxes or Other Taxes by the Company, the Company shall furnish to the Administrative Agent, at its address referred to in Section 11.04 hereof, the original or a certified copy of a receipt evidencing payment thereof. The Company shall compensate each Tax Indemnitee to the extent that such Tax Indemnitee is required to pay any Taxes or Other Taxes as a result of any failure by the Company to so furnish such copy of such receipt.

(5) Without prejudice to the survival of any other agreement of the Company hereunder, the agreements and obligations of the Company contained in this Section 11.05 shall survive the satisfaction in full of the Obligations.



(6) Each Lender and Hannover Liquidity Purchaser agrees that it will deliver to the Administrative Agent and the Company either (A) a letter stating that it is incorporated under the laws of the United States of America or a state thereof or (B) if it is not so incorporated, two duly completed copies of United States Internal Revenue Service Form W8 BEN or Form W8 ECI or successor applicable form, as the case may be, certifying in each case that such Lender or Hannover Liquidity Purchaser, as the case may be, is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes. If a Lender or Hannover Liquidity Purchaser delivers to the Company and the Administrative Agent a Form W8 BEN or Form W8 ECI pursuant to the immediately preceding sentence, it shall deliver to the Company and the Administrative Agent two further copies of such Form, or successor applicable forms, or other manner of certification, as the case may be, on or before the date that any such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Company, and such extensions or renewals thereof as may reasonably be requested by the Company, certifying that such Lender or Hannover Liquidity Purchaser is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required that renders all such forms inapplicable or that would prevent such Lender or Hannover Liquidity Purchaser from duly completing and delivering any such form with respect to it and such Lender or Hannover Liquidity Purchaser advises the Company that it is not capable of receiving payments without any deduction or withholding of United States federal income tax; provided that a Lender or Hannover Liquidity Purchaser shall be required to notify the Company in writing of its inability to receive payments without any deduction or withholding promptly after the date such Lender or Hannover Liquidity Purchaser obtains knowledge of an event requiring withholding of Tax on a payment made by the Company to such Lender or Hannover Liquidity Purchaser.

(7) Notwithstanding the foregoing, if (i) any Lender or Hannover Liquidity Purchaser has previously delivered to the Company and the Administrative Agent a Form W8 ECI or successor applicable form and (ii) by virtue of any action taken or not taken voluntarily by such Lender or Hannover Liquidity Purchaser, such Lender or Hannover Liquidity Purchaser is not lawfully entitled to deliver a subsequent Form W8 ECI or applicable successor form solely as a result of such Lender's or Hannover Liquidity Purchaser's failure to be engaged in the active conduct of a trade or business in the United States or a determination that all amounts to be paid to such Lender or Hannover Liquidity Purchaser hereunder are not effectively connected to such trade or business, the Company shall be under no obligation to compensate such Lender or Hannover Liquidity Purchaser with respect to any tax required to be paid or withheld

under United States federal income tax law (which shall not constitute a "Tax" for purposes hereof) that would not have been required to be paid or withheld had such Lender or Hannover Liquidity Purchaser so delivered such Form W8 ECI or applicable successor form.

Section 11.06. Cumulative Rights: No Waiver. The rights, powers and remedies of the Administrative Agent and each Lender hereunder are cumulative and in addition to all rights, powers and remedies provided under any and all agreements between the Company and the Administrative Agent and each Lender relating hereto, at law, in equity or otherwise. Neither any delay nor any omission by the Administrative Agent or any Lender to exercise any right, power or remedy shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or any exercise of any other right, power or remedy.

Section 11.07. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when executed and delivered, shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same Agreement.

Section 11.08. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.09. Headings. The Article and Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation hereof.

Section 11.10. **GOVERNING LAW. THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

Section 11.11. **WAIVER OF JURY TRIAL. THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND EXPRESSLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ENFORCING OR DEFENDING RIGHTS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE COMPANY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 11.11 HAVE BEEN BARGAINED FOR AND THAT IT HAS BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.**

Section 11.12. **CONSENT TO JURISDICTION. THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (I) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OPERATIVE DOCUMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF; (II) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME; (III) APPOINTS CT CORPORATION SYSTEM WHICH CURRENTLY MAINTAINS A NEW YORK CITY OFFICE AT 111 EIGHTH AVENUE, 13TH FLOOR, NEW YORK, NEW YORK, 10011, UNITED STATES, AS ITS AGENT TO RECEIVE SERVICE OF PROCESS AND AGREES, SO LONG AS THE COMPANY HAS ANY OBLIGATION UNDER THIS AGREEMENT OR THE OPERATIVE DOCUMENTS, THAT IT WILL MAINTAIN A DULY APPOINTED AGENT IN NEW YORK CITY FOR THE SERVICE OF SUCH PROCESS OR SUMMONS, AND FURTHER AGREES THAT IF IT FAILS TO MAINTAIN SUCH AN AGENT, ANY SUCH PROCESS OR SUMMONS MAY BE SERVED BY MAILING A COPY THEREOF BY REGISTERED MAIL, OR A FORM OF MAIL SUBSTANTIALLY EQUIVALENT THERETO, ADDRESSED TO IT AT ITS ADDRESS SET FORTH IN OR DESIGNATED PURSUANT TO SECTION 11.04 HEREIN, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING; AND (IV) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.**

Section 11.13. **No Recourse.** The Company's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the General Partner only and no recourse for the payment of any amount due under this Agreement, any Operative Document or any other agreement contemplated hereby, or for any claim based thereon or otherwise in respect thereof, shall be had against any limited partner of the Company or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of the corporate General Partner or any corporate limited partner or of any successor corporation to such corporate General Partner or to any

corporate limited partner of the Company, or against any direct or indirect parent corporation of such corporate General Partner or of any limited partner of the Company or any other Subsidiary or Affiliate or any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other Subsidiary or Affiliate. Nothing contained in this Section 11.13 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Agreement or any Operative Document referred to herein, of rights and remedies against the limited partnership or the corporate General Partner or the assets of the limited partnership or the corporate General Partner.

Section 11.14. Several Obligations, Remedies Independent. The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender. The amounts payable by the Company at any time hereunder and under the Notes to each Lender shall be a separate and independent debt and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and its Notes, and it shall not be necessary for any other Lender or the Administrative Agent to consent to, or be joined as an additional party in, any proceedings for such purposes.

Section 11.15. No Proceedings and Excess Funds.

(a) All parties hereto agree that they shall not institute against, or join any other person in instituting against Hannover any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceedings under any federal or state bankruptcy or similar law, for one year and a day after the latest maturing Commercial Paper note issued by Hannover is paid.

(b) Hannover shall not be obligated to pay any amount pursuant to this Agreement unless Hannover has excess cash flow from operations or has received funds with respect to such obligation which may be used to make such payment and which funds or excess cash flow are not required to repay when due the Commercial Paper notes of Hannover. Any amount which Hannover does not pay pursuant to the operation of the preceding sentence shall not constitute a claim, as defined in Section 101(5) of the United States Bankruptcy Code, against Hannover for any such insufficiency unless and until Hannover does have excess cash flow or excess funds.

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Credit Agreement to be duly executed as of the date first above written.

CALYON NEW YORK BRANCH,  
as Collateral Agent and Administrative Agent

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

WYGEN FUNDING, LIMITED PARTNERSHIP

By: WYGEN CAPITAL, INC.  
as General Partner

By: \_\_\_\_\_

Name:  
Title:

HANNOVER FUNDING COMPANY, LLC,  
as Tranche A Lender and Tranche B Lender

By: HANNOVER MEMBER, INC.  
as Managing Member

By: \_\_\_\_\_  
Name:  
Title:

CALYON NEW YORK BRANCH,  
as Tranche A Lender and Tranche B Lender

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

BAYERISCHE LENDESBANK, CAYMAN ISLANDS BRANCH,  
as Tranche A Lender

By: \_\_\_\_\_  
Name:  
Title:

U.S. BANK NATIONAL ASSOCIATION  
as Tranche A Lender

By: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK, N.A.,  
as Tranche A Lender

By: \_\_\_\_\_  
Name:  
Title:

NORDDEUTSCHE LANDESBANK GIROZENTRALE  
as Tranche A Lender and Tranche B Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

CONSENTED TO:

BLACK HILLS WYOMING, INC.,  
as Lessee

By: \_\_\_\_\_  
Name:  
Title:

**AMENDED AND RESTATED GUARANTY**

AMENDED AND RESTATED GUARANTY dated as of May 24, 2006 (this "Guaranty"), from BLACK HILLS CORPORATION, a South Dakota corporation (the "Guarantor"), in favor of WYGEN FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership (the "Lessor"), and its successors and assigns.

WHEREAS, Guarantor has executed a Guaranty, dated as of July 20, 2001, as amended by Amendment No. 1 to Guaranty dated as of June 18, 2002 and Amendment No. 2 to Guaranty dated as of December 30, 2004 (as amended, the "Original Guaranty"), which Original Guaranty was entered into in connection with that certain Agreement for Lease and that certain Lease Agreement, each dated as of July 20, 2001, and each executed by Lessor and Black Hills Wyoming, Inc. (f/k/a Black Hills Generation, Inc.), a Wyoming corporation;

WHEREAS, Guarantor has entered into that certain Credit Agreement, dated as of May 5, 2005, among the Guarantor, the financial institutions from time to time party thereto, U.S. Bank, National Association and Union Bank of California, N.A., as co-syndication agents, Bank of America, N.A. and Bank of Montreal dba Harris Nesbitt, as co-documentation agents, and ABN AMRO Bank N.V., as administrative agent; and

WHEREAS, pursuant to Section 5.2 of the Original Guaranty the Financial Covenants contained in the Original Guaranty are to conform at all times to those comparable Financial Covenants contained in any Guarantor Credit Agreement which are more stringent than those Financial Covenants contained in the Original Guaranty.

NOW, THEREFORE, in order to conform the Financial Covenants contained in the Original Guaranty with those contained in the 2005 Credit Agreement, the Guarantor and Lessor wish to amend and restate the Original Guaranty, and Guarantor hereby agrees as follows:

**SECTION 1**

**DEFINED TERMS**

**RULES OF CONSTRUCTION**

1.1 Definitions. As used in this Guaranty, capitalized terms defined in the preamble, Preliminary Statements and other Sections of this Guaranty shall have the meanings set forth therein, terms defined in Exhibit A shall have the meanings set forth therein, and capitalized terms used herein or in Exhibit A but not otherwise defined herein or in Exhibit A shall, except as otherwise provided in the Agreement for Lease or the Lease, have the meanings set forth in the Lease, for any period on or after the Effective Date (as defined in the Lease) or the Agreement for Lease, for any period prior thereto.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.



1.3 Use of Certain Terms. Unless the context of this Guaranty requires otherwise, the plural includes the singular, the singular includes the plural, and “including” has the inclusive meaning of “including without limitation”. The words “hereof”, “herein”, “hereby”, “hereunder”, and other similar terms of this Guaranty refer to this Guaranty as a whole and not exclusively to any particular provision of this Guaranty. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.

1.4 Headings and References. Section and other headings are for reference only, and shall not affect the interpretation or meaning of any provision of this Guaranty. Unless otherwise provided, references to Articles, Sections, Schedules, and Exhibits shall be deemed references to Articles, Sections, Schedules, and Exhibits of this Guaranty. References to this Guaranty and any other Operative Document include this Guaranty and the other Operative Documents as the same may be modified, amended, restated or supplemented from time to time pursuant to the provisions hereof or thereof. A reference to any Law shall mean that Law as it may be amended, modified or supplemented from time to time, and any successor Law. A reference to a Person includes the successors and assigns of such Person, but such reference shall not increase, decrease or otherwise modify in any way the provisions in this Guaranty governing the assignment of rights and obligations under or the binding effect of any provision of this Guaranty.

## **SECTION 2**

### **GUARANTY**

2.1 Guaranty. Subject to the terms and conditions in this Guaranty, the Guarantor absolutely, unconditionally and irrevocably guarantees to the Lessor and each Assignee that (i) all Payment Obligations will be promptly paid in full as and when due in accordance with the terms thereof whether at the stated due date, by acceleration or otherwise, and (ii) the Lessee will duly and punctually perform, comply with, and observe all Covenant Obligations as and when required in accordance with the terms thereof, in each case, without regard to whether such Obligation is direct or indirect, absolute or contingent, now or hereafter existing or owing, voluntary or involuntary, created or arising by contract, operation of Law or otherwise or incurred or payable before or after commencement of any proceedings by or against the Lessee under any Bankruptcy Law.

If an event permitting the exercise of remedies under an Operative Document shall at any time have occurred and be continuing and such exercise, or any consequences thereof provided in such Operative Document, shall at such time be prevented by reason of the pendency against the Lessee of a case or proceeding under a bankruptcy or insolvency law, the Guarantor agrees that, solely for purposes of this Guaranty and its obligations hereunder, the Obligations and all other amounts payable under such Operative Document shall be deemed to have been declared in default, with all attendant consequences as provided in such Operative Document, as if such declaration of default and the consequences thereof had been accomplished in accordance with the terms of such Operative Document, and the Guarantor shall forthwith pay any amounts guaranteed hereunder upon written demand by the Lessor or any Assignee.

2.2 Guaranty Absolute. This Guaranty is an absolute, unlimited and continuing guaranty of performance and payment (and not of collection) of the Obligations. This Guaranty is in no way conditioned upon any attempt to collect from the Lessee or upon any other event or contingency, and shall be binding upon and enforceable against the Guarantor without regard to the validity or enforceability of any Operative Document, or of any term thereof.

The obligations of the Guarantor set forth herein constitute the full recourse obligations of the Guarantor enforceable against it to the full extent of all its assets and properties, notwithstanding any provision in any Operative Document limiting the liability of any Person, or any agreement by a collateral agent under a Financing Arrangement to look for payment with respect thereto solely to certain Property and other collateral as described in the Operative Documents. Without limiting the foregoing, it is agreed and understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Lessee shall be in default with respect to the Obligations under the terms of the Operative Documents and that notwithstanding the recovery hereunder for or in respect of any given default with respect to the Obligations by the Lessee under the Operative Documents, this Guaranty shall remain in full force and effect and shall apply to each and every subsequent default with respect to the Obligations.

2.3 Reinstatement. In case any Operative Document shall be terminated as a result of the rejection thereof by any trustee, receiver or liquidating agent of the Lessee or any of its properties in any Bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding, the Guarantor's obligations hereunder shall continue to the same extent as if such agreement had not been so rejected. The Guarantor agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment to the Lessor of the Obligations or any part thereof is rescinded or must otherwise be returned by the Lessor upon the insolvency, Bankruptcy or reorganization of the Lessee, or otherwise, as though such payment to the Lessor had not been made.

2.4 Enforcement. The Guarantor shall pay all reasonable costs, expenses and damages incurred (including attorneys' fees and disbursements) in connection with the enforcement of the Obligations, to the extent that such costs, expenses and damages are not paid by the Lessee, and in connection with the enforcement of the obligations of the Guarantor under this Guaranty.

2.5 Guaranty Not Subject to Setoff, etc. The obligations of the Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction or defense (other than payment, performance or affirmative discharge, release or termination of this Guaranty by the Lessor and each Assignee (or any agent representing such Assignee) in writing) based upon any claim the Guarantor or the Lessee may have against the Lessor or any other Person or the Guarantor may have against the Lessee and shall remain in full force and effect without regard to, and shall not be released, discharged, reduced or in any way affected by any circumstance or condition (whether or not the Guarantor shall have any knowledge or notice thereof) whatsoever which might constitute a legal or equitable discharge or defense including, but not limited to, (a) the amending, modifying, supplementing or terminating (by operation of law or otherwise), expressly or impliedly, of any Operative Document, or any other instrument applicable to the Lessee or to the Obligations, or any part thereof; (b) any failure on the part of the Lessee to

perform or comply with any term of any Operative Document or any failure of any other Person to perform or comply with any term of any Operative Document; (c) any waiver, consent, change, extension, indulgence or other action or any action or inaction under or in respect of any Operative Document or this Guaranty (except for any written waiver or modification of the provisions of this Guaranty signed by the parties hereto), whether or not the Lessor, the Lessee or the Guarantor has notice or knowledge of any of the foregoing; (d) any Bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding with respect to the Guarantor, the Lessee, or their respective properties or their creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (e) any furnishing or acceptance of additional security or any release of any security (and the Guarantor authorizes the Lessor to furnish, accept or release said security); (f) any limitation on the liability or Obligations of the Lessee under any Operative Document (except as expressly set forth therein) or any termination (by operation of law or otherwise), cancellation (by operation of law or otherwise), frustration, invalidity or unenforceability, in whole or in part, of any Operative Document, or any term thereof; (g) any lien, charge or encumbrance on or affecting the Guarantor's or the Lessee's respective assets and properties; (h) any act, omission or breach on the part of the Lessor or any Assignee under any Operative Document, or any other agreement at any time existing between the Lessor and the Lessee or any other Law, governmental regulation or other agreement applicable to the Lessor or any Obligation; (i) any claim as a result of any other dealings among the Lessor, any Assignee, the Guarantor or the Lessee or any of them; (j) the assignment or transfer of this Guaranty, any Operative Document (in accordance with and subject to the terms thereof) or any other agreement or instrument referred to in any Operative Document or applicable to the Lessee or the Obligations by the Lessor to any other Person; (k) any change in the name of the Lessor, any Assignee, the Lessee or any other Person referred to herein; (l) any subleasing or further subleasing of the Project or any part thereof, or any redelivery, repossession, sale, transfer or other disposition, surrender or destruction of the Project or any part thereof; (m) the transfer, assignment, mortgaging or purported transfer, assignment or mortgaging of all or any part of the interest of the Lessor, its successors or assigns, or the Lessee in the Project; (n) any failure of title with respect to the interest of the Lessor or the Lessee, or their respective successors and assigns, in the Project; (o) any defect in the compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, or any interruption or cessation in the use of or failure to complete the Project or any portion thereof by the Lessee or any other Person for any reason whatsoever (including without limitation any governmental prohibition or restriction, condemnation, requisition, seizure or any other act on the part of any governmental or military authority, or any act of God or of the public enemy, or any Event of Loss), and regardless of the duration thereof (even though such duration would otherwise constitute a frustration of the Lease), whether or not without fault on the part of the Lessee or any other Person; (p) any merger or consolidation of the Lessee or the Guarantor into or with any other Person or any sale, lease or transfer of any other assets of the Lessee or the Guarantor to any other Person; or (q) any change in the ownership of any shares of capital stock of the Guarantor or the Lessee (including any such change which results in an Affiliate of the Guarantor no longer owning capital stock of the Lessee); provided, however, that notwithstanding the foregoing, this Guaranty shall not constitute a waiver or release by the Lessee or the Guarantor of any claim of the Lessee or the Guarantor which may be asserted against the Lessor or any other party in a separate action or proceeding, or if required by applicable Law as a compulsory counterclaim in such action.

2.6 Waiver. The Guarantor unconditionally waives: (a) notice of any of the matters referred to in Section 2 hereof (except as expressly provided above); (b) all notices which may be required by Law or otherwise to preserve any rights against the Guarantor hereunder, including, without limitation, notice of the acceptance of this Guaranty by the Lessor or any Assignee, or the creation, renewal, extension, modification or accrual of the Obligations or notice of any other matters relating thereto, any presentment, demand, notice of dishonor, protest or nonpayment of any damages or other amounts payable under any Operative Document; (c) any requirement for the enforcement, assertion or exercise of any right, remedy, power or privilege under or in respect of any Operative Document, including, without limitation, diligence in collection or protection of or realization upon the Obligations or any part thereof or any collateral therefor; (d) any requirement of diligence; (e) any requirement to mitigate the damages resulting from a default or project termination under any Operative Document, except that this shall not relieve the Lessor of any such obligation; (f) the occurrence of every other condition precedent to which the Guarantor or the Lessee may otherwise be entitled, except as provided in any Operative Document; and (g) the right to require the Lessor to proceed against the Lessee or any other Person liable on the Obligations, to proceed against or exhaust security held from the Lessee or any other Person, or to pursue any other remedy in the Lessor's power whatsoever, and the Guarantor waives the right to have the Property of the Lessee first applied to the discharge of the Obligations.

The Lessor may, at its election, exercise any right or remedy it might have against the Lessee or any security held by the Lessor, including, without limitation, the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of the Guarantor hereunder, except to the extent the Obligations have been indefeasibly paid or satisfied, and the Guarantor waives any defense arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of the Guarantor against the Lessee or any such security, whether resulting from such election by the Lessor or otherwise. The Guarantor waives any defense arising by reason of any disability or other defense of the Lessee (which may nevertheless be asserted in a separate action or proceeding against the Lessor or any other party), or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of the Lessee to the Lessor for the Obligations (other than as a result of payment, performance or affirmative discharge, release or termination of this Guaranty by the Lessor and each Assignee).

The Guarantor understands that the Lessor's or any Assignee's exercise of certain rights and remedies contained in the Operative Documents may affect or eliminate the Guarantor's rights of subrogation against the Lessee and that the Guarantor may therefore incur partially or totally nonreimbursable liability hereunder; nevertheless, the Guarantor hereby authorizes and empowers the Lessor, its successors, endorsees and/or assignees (including each Assignee), to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and intent of the Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances.

The Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Lessee and of all other circumstances bearing upon the risk of nonpayment of the Obligations and agrees that neither the Lessor nor any Assignee shall have any duty to advise the Guarantor of information regarding any condition or circumstance or any change in such

condition or circumstance. The Guarantor acknowledges that the Lessor has not made any representation to the Guarantor concerning the financial condition of the Lessee.

### SECTION 3 COVENANTS OF THE GUARANTOR

3.1 Affirmative Covenants. So long as the Agreement for Lease or the Lease is in effect or the Lessee owes any amount thereunder which is guaranteed by the Guarantor, the Guarantor will (unless the Lessor shall otherwise consent in writing):

(a) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, in all material respects with all applicable Laws (including environmental Laws).

(b) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its Properties which are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted; provided, however, that neither the Guarantor nor any Subsidiary shall be required to maintain or preserve any Property if (i) the Board of Directors of the Guarantor or such Subsidiary shall determine that the maintenance or preservation thereof is no longer desirable in the conduct of the business of the Guarantor or such Subsidiary, as the case may be, (ii) that the loss thereof is not disadvantageous in any material respect to the Guarantor, such Subsidiary or the Lessor or any Assignee, and (iii) that the loss thereof would not materially impair the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner.

(c) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its Property, and (ii) all lawful claims which, if unpaid, might by Law become a lien upon its Property; provided, however, that neither the Guarantor nor any Subsidiary shall be required to pay or discharge any such tax, assessment, charge or claim which is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained.

(d) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Guarantor or such Subsidiary operates.

(e) Preservation of Corporate Existence, Etc. Except as permitted under Section 3.2(b) hereof, preserve and maintain, and cause each Material Subsidiary to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises.

(f) Visitation Rights. At any reasonable time and from time to time (upon prior written notice, if no Event of Default has occurred and is continuing), permit the Lessor, each Assignee or any agents or representatives thereof to examine and make copies of and abstracts from the records and books of account of, and visit the Properties of, the Guarantor and any of its

Subsidiaries, and to discuss the affairs, finances and accounts of the Guarantor and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants. The Guarantor will pay all costs and expenses incurred by the Lessor and Assignee and each of their respective agents or representatives in connection with the exercise of rights under this Section 3.1(f) during the existence of an Event of Default.

(g) Keeping of Books. Keep, and cause each of its Subsidiaries to keep, proper books of record and accounts, in which full and correct entries shall be made of all financial transactions and the assets and business of the Guarantor and each such Subsidiary in accordance with GAAP.

(h) Reporting Requirements. Furnish to the Lessor and each Assignee:

(i) within 60 days after the end of each of the first three quarterly fiscal periods of the Guarantor, a consolidated unaudited balance sheet of the Guarantor and its Subsidiaries, and the related statements of income and statements of cash flow, as of the close of such period, all of the foregoing prepared by the Guarantor in reasonable detail in accordance with GAAP and certified by the Guarantor's chief financial officer or corporate controller as fairly presenting the financial condition as at the dates thereof and the results of operations for the periods covered thereby;

(ii) within 120 days after the end of each fiscal year of the Guarantor, a copy of the Guarantor's financial statements for such fiscal year, including the consolidated balance sheet of the Guarantor and its Subsidiaries for such year and the related statements of income and statements of cash flow, each as certified by independent public accountants of recognized national standing selected by the Guarantor in accordance with GAAP with such accountants' unqualified opinion to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in all material respects in accordance with GAAP the consolidated financial position of the Guarantor and its Subsidiaries as of the close of such fiscal year and the results of their operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; provided, that if the Guarantor delivers to the Lessor and each Assignee its Annual Report on Form 10-K for the applicable annual period, prepared in compliance with the requirements therefor and filed with the SEC, it shall be deemed to satisfy the requirements of this clause (ii) for such annual period;

(iii) each set of financial statements delivered to the Lessor and each Assignee pursuant to clause (i) or (ii) above shall be accompanied by (A) a certificate of a Senior Financial Officer to the effect that no Event of Default, Potential Default or Triggering Event has occurred and is continuing (or, if any Event of Default, Potential Default or Triggering Event has occurred and is continuing, describing the same in reasonable detail and describing the action that the Guarantor has taken and proposes to take with respect thereto), and (B) a Compliance Certificate showing the Guarantor's compliance with the covenants set forth in Sections 3.1(i), 3.1(j) and 3.2(c) hereof;

(iv) as soon as possible and in any event within 5 days after the occurrence of each Event of Default, Potential Default and Triggering Event, continuing on the date of such statement, a statement of a Senior Financial Officer setting forth details of such Event of Default, Potential Default or Triggering Event and the action which the Guarantor has taken and proposes to take with respect thereto;

(v) promptly, and in any event within 5 days upon their becoming available, one copy of (A) each financial statement, report, notice or proxy statement sent by the Guarantor or any Subsidiary of the Guarantor to public securities holders generally, (B) any current reports on Form 8-K or other material reports the Guarantor files with the SEC pursuant to the Securities Exchange Act of 1934, and (C) each regular, periodic or current report and each registration statement (without exhibits except as expressly requested by the Lessor or such Assignee and other than registration statements on Form S-8 or any successor form), and each final prospectus and all amendments thereto filed by the Guarantor or any Subsidiary of the Guarantor with the SEC;

(vi) promptly and in any event within 10 days after the Guarantor or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a statement of a Senior Financial Officer describing such ERISA Event and the action, if any, which the Guarantor or such ERISA Affiliate proposes to take with respect thereto;

(vii) promptly and in any event within 2 days after receipt thereof by the Guarantor or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan;

(viii) promptly and in any event within 5 days after receipt thereof by the Guarantor or any ERISA Affiliate from the sponsor of a Multiemployer Plan, a copy of each notice received by the Guarantor or any ERISA Affiliate concerning (A) the imposition of Withdrawal Liability by a Multiemployer Plan, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any Multiemployer Plan or (C) the amount of liability incurred, or which may be incurred, by the Guarantor or any ERISA Affiliate in connection with any event described in clause (A) or (B) above;

(ix) promptly after the commencement thereof, notice of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Guarantor or any Material Subsidiary which may materially adversely affect the financial condition, results of operations, operations, business, properties or prospects of the Guarantor or any such Material Subsidiary or which purports to affect the legality, validity, or enforceability of any Obligations, this Guaranty or any Operative Document;

(x) promptly after the Guarantor (i) receives a rating from S&P and Moody's with respect to its commercial paper or senior unsecured non-credit enhanced long-term debt (each a "Rating"), or (ii) knows of any change in such Rating by S&P or Moody's, a notice of such Rating or such changed Rating, as the case may be; and

(xi) such other information respecting the condition or operations, financial or otherwise, of the Guarantor or any of its Subsidiaries as the Lessor or any Assignee may from time to time reasonably request.

(i) Consolidated Net Worth. At the end of each fiscal quarter maintain Consolidated Net Worth in an amount of not less than the sum of (i) \$625,000,000, *plus* (ii) fifty percent (50%) of the aggregate Consolidated Net Income, if positive, for the period beginning January 1, 2005 and ending on the last day of such fiscal quarter.

(j) Interest Expense Coverage Ratio. Maintain an Interest Expense Coverage Ratio of not less than 2.50 to 1.00, as determined at the end of each fiscal quarter.

(k) Compliance with ERISA. Promptly pay and discharge, and cause each of its Subsidiaries to promptly pay and discharge, all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets and will promptly notify the Lessor and Assignee of (i) the occurrence of any reportable event (as defined in ERISA) affecting a Plan, other than any such event of which the PBGC has waived notice by regulation, (ii) receipt of any notice from PBGC of its intention to seek termination of any Plan or appointment of a trustee therefor, (iii) its or any of its Subsidiaries' intention to terminate or withdraw from any Plan, and (iv) the occurrence of any event affecting any Plan which could result in the incurrence by the Guarantor or any of its Subsidiaries of any material liability, fine or penalty, or any material increase in the contingent liability of the Guarantor or any of its Subsidiaries under any post-retirement Welfare Plan benefit.

3.2 Negative Covenants. So long as the Agreement for Lease or the Lease is in effect or the Lessee owes any amount thereunder which is guaranteed by the Guarantor, the Guarantor will not, without the written consent of the Lessor:

(a) Liens. Create, incur, permit to exist or to be incurred, or permit any of its Subsidiaries to, create, incur, permit to exist or to be incurred, any Lien of any kind on any Property owned by the Guarantor or any Subsidiary of the Guarantor; provided, however, that this Section 3.2(a) shall not apply to nor operate to prevent:

(i) Liens arising by operation of law in respect of Property of the Guarantor or any of its Subsidiaries which are incurred in the ordinary course of business and which do not in the aggregate materially detract from the value of such Property or materially impair the use thereof in the operation of the business of the Guarantor or any of its Subsidiaries;

(ii) Liens securing (i) Non-Recourse Indebtedness of any Subsidiary of the Guarantor or (ii) the obligations of a Project Finance Subsidiary under a power purchase agreement, provided, that in the case of clause (i) above any such Lien is limited to the Property being financed or refinanced by such Indebtedness and the stock (or similar equity interest) of the Subsidiary which incurred such Non-Recourse Indebtedness, and in the case of clause (ii) above any such Lien is limited to the Property and the stock (or similar equity interest) of such Project Finance Subsidiary;

(iii) Liens for taxes or assessments or other government charges or levies on the Guarantor or any Subsidiary of the Guarantor or their respective Properties which are being



contested in good faith by appropriate proceedings and for which reserves in conformity with GAAP have been provided on the books of the Guarantor; provided, that the aggregate amount of liabilities (including interest and penalties, if any) of the Guarantor and its Subsidiaries secured by such Liens shall not exceed \$20,000,000 at any one time outstanding;

(iv) Liens arising out of judgments or awards against the Guarantor or any Subsidiary of the Guarantor, or in connection with surety or appeal bonds in connection with bonding such judgments or awards, the time for appeal from which or petition for rehearing of which shall not have expired or with respect to which the Guarantor or such Subsidiary shall be prosecuting an appeal or proceeding for review, and with respect to which it shall have obtained a stay of execution pending such appeal or proceeding for review; provided, that the aggregate amount of liabilities (including interest and penalties, if any) of the Guarantor and its Subsidiaries secured by such Liens shall not exceed \$20,000,000 at any one time outstanding;

(v) Survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties which are necessary for the conduct of the activities of the Guarantor and any Subsidiary of the Guarantor or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not in any event materially impair their use in the operation of the business of the Guarantor or any Subsidiary of the Guarantor;

(vi) Liens existing on the date hereof and listed on Schedule 7.9 to the Guarantor 2005 Credit Agreement;

(vii) Liens securing (A) Indebtedness evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of personal property of the Guarantor or a Subsidiary of the Guarantor used in the ordinary course of business of the Guarantor or a Subsidiary of the Guarantor, (B) Capitalized Lease Obligations, and (C) the performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on performance bonds; provided, that such Liens shall only be permitted to the extent the aggregate amount of Indebtedness and other obligations secured by all such Liens does not exceed five percent (5%) of Consolidated Assets as reflected on the most recent balance sheet delivered by the Guarantor pursuant to Section 3.1(h);

(viii) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(ix) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits;

(x) Liens relating to synthetic lease arrangements of the Guarantor or a Subsidiary of the Guarantor, provided that (A) such Lien is limited to the Property being leased, and (B) to the extent the lessor or any other Person has recourse to the Guarantor, any Subsidiary or any of their Property (other than the Property being so leased), through a Guarantee (including a residual guarantee) or otherwise, such Lien shall be permitted if the Guarantor has included the recourse

portion of such obligations as Indebtedness for all purposes (including financial covenant calculations) under the Operative Documents;

(xi) Liens on assets of the Marketing Subsidiaries granted in the ordinary course of business securing the reimbursement obligations of Marketing Subsidiaries with respect to letters of credit and any working capital facility of the Marketing Subsidiaries so long as the holder of such reimbursement obligation or provider of such working capital facility has no recourse against the Guarantor or a Consolidated Subsidiary of the Guarantor other than such Marketing Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise);

(xii) Liens securing Indebtedness issued pursuant to (A) that certain Restated and Amended Indenture of Mortgage and Deed of Trust dated as of September 1, 1999, between BHP and The Chase Manhattan Bank, as trustee (and any successor trustee thereunder), and (B) that certain Indenture of Mortgage and Deed of Trust dated March 1, 1948, between Cheyenne and The United States National Bank of Denver, as trustee (and any successor trustee thereunder), together with all amendments and supplemental indentures thereto, and the industrial revenue bonds issued in connection therewith; and

(xiii) Any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any Lien referred to in the foregoing paragraphs (i) through (x), inclusive; provided, however, that the principal amount of Indebtedness secured thereby shall not exceed the principal amount of Indebtedness so secured at the time of such extension, renewal or replacement, and that such extension, renewal or replacement shall be limited to the Property which was subject to the Lien so extended, renewed or replaced.

provided, that the foregoing paragraphs shall not be deemed under any circumstance to permit a Lien to exist on any capital stock or other equity interests of the Material Subsidiaries.

(b) Mergers, Consolidations and Sales of Assets. Will not, and will not permit any of its Material Subsidiaries to, (i) consolidate with or be a party to merger with any other Person or (ii) sell, lease or otherwise dispose of all or a “*substantial part*” of the assets of the Guarantor and its Subsidiaries; provided, however, that (w) the foregoing shall not prohibit any sale, lease, transfer or disposition to which the Lessor and Assignee have consented, such consent not to be unreasonably withheld if (A) such transaction does not result in a downgrade of either the Guarantor’s S&P Rating or Moody’s Rating, (B) such transaction is for cash consideration (or other consideration acceptable to the Lessor and Assignee) in an amount not less than the fair market value of the applicable assets, and (C) such transaction, when combined with all other such transactions, would not have a Material Adverse Effect, taken as a whole, (x) any Subsidiary of the Guarantor may merge or consolidate with or into or sell, lease or otherwise convey all or a substantial part of its assets to the Guarantor or any Subsidiary of which the Guarantor holds (directly or indirectly) at least the same percentage equity ownership; provided, that in any such merger or consolidation involving the Guarantor, the Guarantor shall be the surviving or continuing corporation, (y) the Guarantor and its Subsidiaries may sell inventory, reserves and electricity in the ordinary course of business, and (z) the Guarantor may enter into a merger with, or acquisition of all of, another Person so long as:

(1) the Guarantor is the surviving entity,

- (2) unless consented to by the Lessor and Assignee, no downgrade in the Guarantor's S&P Rating or Moody's Rating would occur as a result of the consummation of such a transaction,
- (3) if such transaction is an acquisition, the Board of Directors (or similar governing body) of the Person being acquired has approved being so acquired,
- (4) no Potential Default or Event of Default would have occurred and is continuing at the time of, or would occur as a result of, such transaction.

As used in this Section 3.2(b), a sale, lease, transfer or disposition of assets during any fiscal year shall be deemed to be of a "*substantial part*" of the consolidated assets of the Guarantor and its Subsidiaries if the net book value of such assets, when added to the net book value of all other assets sold, leased, transferred or disposed of the Guarantor and its Subsidiaries (excluding the Marketing Subsidiaries) during such fiscal year (other than inventory, reserves and electricity in the ordinary course of business) exceeds ten percent (10%) of the total assets of the Guarantor and its Subsidiaries, determined on a consolidated basis as of the last day of the immediately preceding fiscal year.

(c) Recourse Leverage Ratio. Guarantor will not at the end of any fiscal quarter permit the Recourse Leverage Ratio to exceed 0.65 to 1.00.

#### SECTION 4 REPRESENTATIONS & WARRANTIES

The Guarantor represents and warrants to the Lessor that:

4.1 Corporate Existence; Compliance with Law. The Guarantor (a) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of South Dakota, (b) has full power, authority and legal right to own and operate its properties or to lease the properties it operates and to conduct its business as presently conducted and (c) is duly qualified to do business as a foreign corporation in good standing in each jurisdiction where its ownership or lease of properties or the conduct of its business requires such qualification.

4.2 Corporate Power; Authorization; Enforceable Obligations. The Guarantor has full power, authority and legal right to execute, deliver and perform its obligations under this Guaranty and has taken all necessary corporate action to authorize the execution, delivery and performance of this Guaranty. No consent of any other Person (including, without limitation, stockholders and creditors of the Guarantor), and no authorization of, notice to, or other act by or in respect of the Guarantor by or with any governmental authority, agency or instrumentality is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty. This Guaranty has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

4.3 No Legal Bar. The execution, delivery and performance by the Guarantor of this Guaranty will not violate any provision of any existing Law or regulation applicable to the Guarantor, or of any award, order or decree applicable to the Guarantor of any court, arbitrator or governmental authority, or of the certificate of incorporation or bylaws of the Guarantor, or of any security issued by the Guarantor, or of any mortgage, indenture, lease, contract or other agreement or undertaking to which the Guarantor is a party or by which the Guarantor or any of its properties or assets is bound, or will result in the creation or imposition of any lien, charge, encumbrance or security interest on any of the properties or assets of the Guarantor pursuant to the provisions of any of the foregoing.

4.4 ERISA. The Guarantor and its Subsidiaries are not in violation of the Employee Retirement Income Security Act of 1974, as amended, except to the extent any such violation could not reasonably be expected to have a material adverse effect on, (a) the business, assets, properties, revenues, financial condition, operations or prospects of the Guarantor or (b) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner. For purposes of this paragraph, the term "Subsidiary" shall mean with respect to any Person, any corporation, partnership, joint venture, or other entity of which more than 50% of the outstanding capital stock or other ownership interest (irrespective of whether or not at the time capital stock or other equity interest of any other class or classes of such corporation, partnership, joint venture, or other entity shall or might have voting power upon the happening of any contingency) is at the time owned directly or indirectly by such Person.

4.5 Ownership of Lessee. All of the Lessee's capital stock is owned (directly or indirectly) beneficially and of record by the Guarantor.

4.6 Financial Statements. The financial statements contained in the Guarantor's Annual Report on Form 10-K for the year ended December 31, 2005 fairly present the financial position, results of operations and cash flows of the Guarantor and its Subsidiaries as of the dates and for the periods indicated therein and have been prepared in accordance with GAAP.

4.7 Changes. Since December 31, 2005, there has been no material adverse change in the business, assets, properties, revenues, financial condition, operations or prospects of the Guarantor and its Subsidiaries, taken as a whole, nor any change which would materially impair the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner.

4.8 Litigation. There is no action, suit, proceeding or investigation at law or in equity by or before any court, governmental body, agency, commission or other tribunal now pending or threatened against or affecting the Guarantor or any of its Subsidiaries or any Property or rights of any of them or questioning the enforceability of this Guaranty, which, if adversely determined, could reasonably be expected to have a material adverse effect on, (a) the business, assets, properties, revenues, financial condition, operations or prospects of the Guarantor, (b) the ability of the Guarantor to perform its obligations under this Guaranty in a timely manner or (c) which purports to affect the legality, validity or enforceability of this Guaranty or the transactions contemplated hereby.

## SECTION 5

## MISCELLANEOUS

5.1 Payments. Each payment by the Guarantor under this Guaranty shall be made in immediately available funds to or on the order of the Lessor or the collateral agent under any Financing Arrangement, as the case may be, in each case without setoff or counterclaim; provided, that no such payment shall be deemed a waiver of any rights the Guarantor may have against the Lessor or the Lessee.

5.2 Financial Covenants. Certain financial covenants relating to consolidated net worth, the recourse leverage ratio, and the interest coverage ratio are set forth in the Guarantor 2005 Credit Agreement and may be included from time to time in other Guarantor Credit Agreements, and corresponding financial covenants are set forth in Section 3.1(i) (Consolidated Net Worth), Section 3.2(c) (Recourse Leverage Ratio) and Section 3.1(j) (Interest Expense Coverage Ratio) herein (together the "Financial Covenants"). The Guarantor agrees to amend this Guaranty such that the Financial Covenants set forth in this Guaranty shall be made to conform to comparable Financial Covenants which are more stringent and which may be set forth in any such Guarantor Credit Agreements from time to time. In no event shall the Financial Covenants contained in this Guaranty be amended to conform to any such Financial Covenant that is less stringent than the corresponding Financial Covenant as set forth in this Guaranty. The Guarantor shall deliver to the Lessor and Assignee a certificate of a Senior Financial Officer (i) within thirty (30) days after each amendment, modification, restatement or deletion of any Financial Covenant, specifying the effective date of such amendment, modification, restatement or deletion, and the Financial Covenant in effect as a result thereof, and (ii) within thirty (30) days after a replacement Guarantor Credit Agreement becomes effective, specifying the effective date of such Guarantor Credit Agreement and enclosing copies of the Financial Covenants in effect as a result thereof. Furthermore, the Guarantor shall sign any instrument necessary to effect any amendment to this Guaranty, if necessary pursuant to provisions set forth in this Section 5.2.

5.3 Parties. This Guaranty shall inure to the benefit of the Lessor and each Assignee and its and their respective successors, assigns or transferees, and shall be binding upon the Guarantor and its successors and assigns. The Guarantor may not delegate any of its duties under this Guaranty without the prior written consent of the Lessor and the collateral agent under any Financing Arrangement. Upon notice to the Guarantor, the Lessor and its successors, assigns and transferees may assign its or their rights and benefits under this Guaranty to (i) any financial institutions providing financing to the Lessor in connection with the Agreement for Lease and the Lease or any collateral agent for such financial institutions, and (ii) any purchaser or transferee of all or a substantial portion of the rights and interests of the Lessor and its successors, assigns or transferees in and to the Project.

5.4 Notices. All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express courier service (including Federal Express, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed through the United States Postal Service, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; provided, that in the case of a notice by

telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clauses (a), (b) or (c) of this Section 5.4. All notices shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving written notice to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to the Lessor:

Wygen Funding, Limited Partnership  
c/o ML Leasing Equipment Corp.  
Four World Financial Center  
New York, New York 10080

Attn: Natalya Anbinder  
Tel: (212) 449-7113  
Fax: (212) 449-4246

With a copy to:

ML Leasing Equipment Corp.  
Four World Financial Center  
New York, New York 10080

Attn: Robert Lyons  
Fax: (212) 671-4511

and to:

Calyon New York Branch  
1301 Avenue of the Americas  
New York, New York 10019

Attn: Martin Livingston  
Tel: (212) 261-7891  
Fax: (212) 261-3421

If to the Guarantor:

Black Hills Corporation  
625 Ninth Street  
Rapid City, South Dakota 57709

Attn: Garner M. Anderson

Vice President - Treasurer  
Tel: (605) 721-2311  
Fax: (605) 721-2597

5.5 Remedies. The Guarantor stipulates that the remedies at law in respect of any default or threatened default by the Guarantor in the performance of or compliance with any of the terms of this Guaranty are not and will not be adequate, and that any of such terms may be specifically enforced by a decree for specific performance or by an injunction against violation of any such terms or otherwise.

5.6 Right to Deal with the Lessee. At any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of the Guarantor hereunder, the Lessor or any Assignee may deal with the Lessee in the same manner and as fully and as if this Guaranty did not exist and shall be entitled, among other things, to grant the Lessee, without notice or demand and without affecting the Guarantor's liability hereunder, such extension or extensions of time to perform, renew, compromise, accelerate or otherwise change the time for payment of or otherwise change the terms of payment or any part thereof contained in or arising under any Operative Document, or to waive any Obligation of the Lessee to perform any act or acts as the Lessor or any Assignee may deem advisable.

5.7 Subrogation. The Guarantor will not exercise any rights which it may acquire by way of subrogation hereunder, by any payment made hereunder or otherwise, until all of the Obligations have been indefeasibly paid in full in cash and performed in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash, such amount shall be held in trust for the benefit of the Lessor and the collateral agent under any Financing Arrangement and shall forthwith be paid as provided in Section 5.1 hereof to be credited and applied upon the Obligations, whether matured or unmatured, in accordance with the terms of the Operative Documents. If (a) the Guarantor shall make payment to the Lessor or any successor, assignee or transferee of the Lessor of all or any part of the Obligations and (b) all the Obligations shall be indefeasibly paid in full in cash, the Lessor or any such successor, assignee or transferee of the Lessor will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse as set forth in Section 30 of the Lease, and without representation or warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations resulting from such payment by the Guarantor.

5.8 Survival of Representations, Warranties, etc. All representations, warranties, covenants and agreements made herein and in statements or certificates delivered pursuant hereto shall survive any investigation or inspection made by or on behalf of the Lessor or any Assignee and shall continue in full force and effect until all of the obligations of the Guarantor under this Guaranty shall be fully performed in accordance with the terms hereof, including without limitation the payment and performance in full of all Obligations.

5.9 Third Party Beneficiaries. The Guarantor acknowledges and agrees that each Indemnified Person (as defined in the Lease) shall be a third party beneficiary of this Guaranty with respect to all indemnified amounts and all other amounts that are owed by the Lessee to such party under the Operative Documents.

5.10 Governing Law and Consent to Jurisdiction; Waiver of Jury Trial. THIS GUARANTY HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK. THE GUARANTOR AND LESSOR AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE OF NEW YORK, THIS GUARANTY, AND THE RIGHTS AND DUTIES OF THE GUARANTOR AND LESSOR HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, IN RESPECT OF ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE GUARANTOR HEREBY IRREVOCABLY SUBMITS, FOR ITSELF AND ITS PROPERTIES, TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS GUARANTY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS GUARANTY OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURT. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE AND DOES NOT PRECLUDE LESSOR OR ANY ASSIGNEE FROM OBTAINING JURISDICTION OVER THE GUARANTOR IN ANY COURT OTHERWISE HAVING JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. THE GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS GUARANTY OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE GUARANTOR AND LESSOR EXPRESSLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS GUARANTY. THE GUARANTOR AND LESSOR ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION 5.10 HAVE BEEN BARGAINED FOR AND THAT THEY HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

5.11 Severability. If any term of this Guaranty or any application thereof shall be invalid or unenforceable, the remainder of this Guaranty and any other application of such term shall not be affected thereby. Any term of this Guaranty may be amended, modified, waived, discharged or terminated only by an instrument in writing signed by the Guarantor and Lessor, and consented to by the collateral agent under any Financing Arrangement.

5.12 Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.



5.13 No Merger. There shall be no merger of this Guaranty and the Lease by reason of the fact that the same person, firm or entity is, directly or indirectly, the Guarantor and a lessee under the Lease or acquires or holds the leasehold estate created by the Lease or any part of such leasehold estate.

5.13 Amendment and Restatement. This Guaranty amends, restates and supercedes in its entirety the Original Guaranty in all respects.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have caused this Guaranty to be executed and delivered as of the day and year first above written.

BLACK HILLS CORPORATION,  
as Guarantor

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

WYGEN FUNDING, LIMITED PARTNERSHIP

By: Wygen Capital, Inc., its  
General Partner

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### DEFINED TERMS

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person.

“Agreement for Lease” means the Agreement for Lease, dated as of July 20, 2001, between the Lessor and the Lessee.

“Bankruptcy” means, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy. A “Voluntary Bankruptcy” means, with respect to any Person, (i)(a) the inability of such Person generally to pay its debts as such debts become due, (b) the failure of such Person generally to pay its debts as such debts become due or (c) an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; (ii) the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its Property; or (iii) corporate action taken by such Person to authorize any of the actions set forth above. An “Involuntary Bankruptcy” means, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency, or similar statute, law or regulation, or the filing of any such petition against such Person which petition shall not be dismissed or stayed within sixty (60) days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the Property of such Person which order shall not be dismissed or stayed within sixty (60) days.

“BHP” means Black Hills Power, Inc., a South Dakota corporation, and its successors.

“Capital” means, as of any date of determination thereof, without duplication, the sum of (A) Consolidated Net Worth *plus* (B) all Recourse Indebtedness (provided that for purposes of clause (B) of this definition, to the extent otherwise included, Indebtedness of Marketing Subsidiaries in an aggregate amount not to exceed the Marketing Subsidiary Indebtedness Limit incurred under Marketing Subsidiary Excluded Credit Facilities shall not be deemed to be Recourse Indebtedness).

“Capital Lease” means at any date any lease of Property which, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“Capitalized Lease Obligations” means, for any Person, the amount of such Person’s liabilities under Capital Leases determined at any date in accordance with GAAP.

“Change of Control Event” means one or more of the following events:

(a) less than a majority of the members of the Board of Directors of the Guarantor shall be persons who either (i) were serving as directors on the date hereof or (ii) were nominated as directors and approved by the vote of the majority of the directors who are directors referred to in clause (i) above or this clause (ii); or

(b) the stockholders of the Guarantor shall approve any plan or proposal for the liquidation or dissolution of the Guarantor; or

(c) a Person or group of Persons acting in concert (other than the direct or indirect beneficial owners of the Voting Stock of the Guarantor as of the date hereof) shall, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, have become the direct or indirect beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended from time to time) of Voting Stock of the Guarantor representing more than ten percent (10%) of the combined voting power of the outstanding Voting Stock or other ownership interests for the election of directors or shall have the right to elect a majority of the Board of Directors of the Guarantor; or

(d) Except as permitted by Section 3.2(b), the Guarantor ceases at any time to own one hundred percent (100%) of the Voting Stock and other equity interest of any Material Subsidiary.

“Cheyenne” means Cheyenne Light, Fuel & Power Company, a Wyoming corporation, and its successors.

“Compliance Certificate” means a certificate in the form of Exhibit B hereto.

“Consolidated Assets” means all assets which should be listed on the consolidated balance sheet of the Guarantor and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

“Consolidated EBITDA” means, for any period, for the Guarantor and its Consolidated Subsidiaries on a consolidated basis, (A) the sum of the amounts for such period of (i) Consolidated Net Income, (ii) to the extent deducted in arriving at Consolidated Net Income, net federal, state and local income taxes in respect of such period, (iii) to the extent deducted in arriving at Consolidated Net Income, Consolidated Interest Expense, (iv) to the extent deducted in arriving at Consolidated Net Income, the amount charged for the amortization of intangible assets, (v) to the extent deducted in arriving at Consolidated Net Income, the amount charged for the depreciation and depletion of assets, and (vi) to the extent deducted in arriving at Consolidated Net Income, losses on sales of assets (excluding sales in the ordinary course of business) and other extraordinary losses, less (B) the amount for such period of (i) to the extent added in arriving at Consolidated Net Income, interest income arising from traditional investment activities with banks, investment banks and other financial institutions or relating to governmental or other marketable securities and (ii) to the extent added in arriving at Consolidated Net Income, gains on sales of assets (excluding sales in the ordinary course of business) and other extraordinary gains, all as determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, for any period of the Guarantor and its Consolidated Subsidiaries, the amount for such period of consolidated net income (or net loss) of the Guarantor and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Worth” means, as of any time the same is to be determined, the total shareholders’ equity (including capital stock, additional paid-in-capital and retained earnings after deducting treasury stock, but excluding (to the extent otherwise included in calculating shareholders’ equity), minority interests in Subsidiaries) which would appear on the consolidated balance sheet of the Guarantor determined on a consolidated basis in accordance with GAAP.

“Consolidated Subsidiary” means, as to any Person, each subsidiary of such Person (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated, with the financial statements of such Person in accordance with GAAP, including principles of consolidation.

“Consolidated Interest Expense” means, with reference to any period of the Guarantor and its Subsidiaries, the sum of (i) all interest charges (including capitalized interest, imputed interest charges with respect to Capitalized Lease Obligations and all amortization of debt discount and expense and other deferred financing charges) of the Guarantor and its subsidiaries on a consolidated basis for such period determined in accordance with GAAP, (ii) all commitment or other fees payable in respect of the issuance of standby letters of credit or other credit facilities for the account of the Guarantor or its Subsidiaries, and (iii) net costs/expenses incurred by the Guarantor and its Subsidiaries under interest rate derivative arrangements.

“Covenant Obligations” means, all obligations, covenants, and undertakings of the Lessee contained in or arising under the Operative Documents, other than Payment Obligations.

“Credit Agreement” means the Amended and Restated Credit Agreement, dated as of the date hereof, entered into among the Lessor, the lenders parties thereto, the liquidity purchasers parties thereto and Calyon New York Branch (formerly known as Credit Lyonnais New York Branch), as Administrative Agent, as the same may be amended, restated, modified or supplemented from time to time.

“Derivative Arrangement” means any agreement (including any master agreement and any agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, future agreement, currency swap agreement, cross-currency rate swap agreement, swaption, currency option, that relates to fluctuations in raw material prices or utility or energy prices or other costs, or any other similar agreement, including any option to enter into any of the foregoing, or any combination of any of the foregoing. “Derivative Arrangements” shall include all such agreements or arrangements made or entered into at any time, or in effect at any time, whether or not related to a Loan or L/C Obligations (as such terms are defined in the Guarantor 2005 Credit Agreement).

“Derivative Obligations” means, with respect to any Person, all liabilities of such Person under any Derivative Arrangement (including but not limited to obligations and liabilities arising in connection with or as a result of early or premature termination of a Derivative Arrangement,

whether or not occurring as a result of a default thereunder), absolute or contingent, now or hereafter existing or incurred or due or to become due.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person who, for purposes of Title IV of ERISA, is a member of the Guarantor’s controlled group, or under common control with the Guarantor, within the meaning of Section 414 of the Code and the regulations promulgated and rulings issued thereunder.

“ERISA Event” means (i) a reportable event, within the meaning of Section 4043 of ERISA, unless the 30-day notice requirement with respect thereto has been waived by the PBGC, (ii) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA), (iii) the cessation of operations at a facility in the circumstances described in Section 4068(f) of ERISA; (iv) the withdrawal by the Guarantor or an ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (v) the failure by the Guarantor or any ERISA Affiliate to make a payment to a Plan required under Section 302(f)(1) of ERISA, which Section imposes a lien for failure to make required payments; (vi) the adoption of an amendment to a Plan requiring the provision of security to such Plan, pursuant to Section 307 of ERISA; or (vii) the institution by the PBGC of proceedings to terminate a Plan, pursuant to Section 4042 of ERISA, or the occurrence of any event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, a Plan.

“Event of Default” means any of the following events shall occur and be continuing:

(a) the Guarantor shall fail to pay any amount due under this Guaranty when the same becomes due and payable; or

(b) any representation or warranty made by the Guarantor in this Guaranty or by the Guarantor (or any of its officers) in connection with this Guaranty or any Financing Arrangement shall prove to have been incorrect in any material respect when made; or

(c) the Guarantor shall fail to perform or observe (i) any term, covenant or agreement contained in Section 3.2 hereof, or (ii) any other term, covenant or agreement contained in this Guaranty on its part to be performed or observed if the failure to perform or observe such other term, covenant or agreement shall remain unremedied for (30) thirty days after written notice thereof shall have been given to the Guarantor by the Lessor or any Assignee; or

(d) the Lessee, the Guarantor or any of its Material Subsidiaries shall fail to pay any principal or premium or interest on any Indebtedness which is outstanding in a principal amount of at least \$20,000,000 in the aggregate of the Lessee, the Guarantor or any such Material Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any,

specified in the agreement or instrument relating to such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the scheduled maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) the entry of a decree or order for relief in respect of the Lessee or the Guarantor by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's Property, or ordering the winding up or liquidation of the Lessee's or the Guarantor's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and such decree or order remains unstayed and in effect for sixty (60) consecutive days; or the commencement against the Lessee or the Guarantor of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of sixty (60) consecutive days; or

(f) the suspension or discontinuance of the Lessee's or the Guarantor's business operations, or the Lessee's or the Guarantor's insolvency (however evidenced), or the Lessee's or the Guarantor's admission of insolvency or bankruptcy, or the commencement by the Lessee or the Guarantor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Lessee or the Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's Property, or the making by the Lessee or the Guarantor of an assignment for the benefit of creditors, or the failure of the Lessee or the Guarantor generally to pay its debts as such debts become due, or the taking of corporate action by the Lessee or the Guarantor in furtherance of any such action; or

(g) any final judgment or judgments for the payment of money in excess of \$20,000,000 in the aggregate shall be rendered against the Lessee, the Guarantor or any of its Material Subsidiaries by any court of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) days during which execution of such judgment or judgments shall not be effectively stayed; or

(h) any ERISA event shall have occurred with respect to a Plan and, thirty (30) days after notice thereof shall have been given to the Guarantor by the Lessor or any Assignee, (i) such ERISA Event shall still exist and (ii) the sum (determined as of the date of occurrence of such ERISA Event) of the Insufficiency of such Plan and the Insufficiency of any and all other Plans with respect to which an ERISA Event shall have occurred and then lost (or, in the case of a Plan with respect to which an ERISA Event

described in clauses (iii) through (vi) of the definition of ERISA Event shall have occurred and then exist, the liability related thereto) is equal to or greater than \$20,000,000; or

(i) the Guarantor or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount which, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Guarantor and its ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds \$20,000,000 or requires payments exceeding \$20,000,000 per annum; or

(j) the Guarantor or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, if as a result of such reorganization or termination the aggregate annual contributions of the Guarantor and its ERISA Affiliates to all Multiemployer Plans which are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the respective plan year of each such Multiemployer Plan immediately preceding the plan year in which the reorganization or termination occurs by an amount exceeding \$20,000,000, or

(k) the Guarantor or any ERISA Affiliate shall have committed a failure described in Section 302(f)(1) of ERISA and the amount determined under Section 302(f)(3) of ERISA is equal to or greater than \$20,000,000; or

(l) a Change of Control Event shall have occurred.

“Financial Statements” means the financial statements accompanying the Guarantor’s Annual Report on Form 10-K or the Guarantor’s Quarterly Reports on Form 10-Q filed from time to time with the SEC pursuant to the Securities Exchange Act of 1934.

“GAAP” means generally accepted accounting principles as in effect in the United States from time to time, applied by the Guarantor and its Subsidiaries on a basis consistent with the preparation of the Guarantor’s financial statements furnished to the Lessor as described in Section 4.6 hereof.

“Guarantee” means, in respect of any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness or other obligations of another Person, including, without limitation, by means of an agreement to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to maintain financial covenants, or to assure the payment of such Indebtedness by an agreement to make payments in respect of goods or services regardless of whether delivered, or otherwise, provided, that the term “Guarantee” shall not include endorsements for deposit or collection in the ordinary course of business; and such term when used as a verb shall have a correlative meaning.

“Guarantor Credit Agreement” means the Guarantor 2005 Credit Agreement and any other credit agreement pertaining to Indebtedness entered into by the Guarantor, including any such credit agreement to replace or refinance the Indebtedness under the Guarantor 2005 Credit Agreement.



“Guarantor 2005 Credit Agreement” means the Credit Agreement, dated as of May 5, 2005, among the Guarantor, the financial institutions from time to time party thereto, U.S. Bank, National Association and Union Bank of California, N.A., as co-syndication agents, Bank of America, N.A. and Bank of Montreal dba Harris Nesbitt, as co-documentation agents, and ABN AMRO Bank N.V., as administrative agent, as the same may be amended, restated, modified, supplemented or replaced from time to time.

“Immaterial Subsidiary” shall mean, any direct or indirect subsidiary of the Guarantor (i) whose total assets (as determined in accordance with GAAP) do not represent at least five percent (5%) of the total assets (as determined in accordance with GAAP) of the Guarantor and its subsidiaries on a consolidated basis or (ii) whose total revenues (as determined in accordance with GAAP) do not represent at least five percent (5%) of the total revenues (as determined in accordance with GAAP) of the Guarantor and its subsidiaries on a consolidated basis, *provided* that no subsidiary shall be deemed an Immaterial Subsidiary to the extent (a) the total assets of such subsidiary, when combined with the total assets of other subsidiaries which are Immaterial Subsidiaries, represent at least ten percent (10%) of the total assets (as determined in accordance with GAAP) of the Guarantor and its subsidiaries on a consolidated basis or (ii) the total revenues of such subsidiary, when combined with the total revenues of other Immaterial Subsidiaries, (as determined in accordance with GAAP) represent at least ten percent (10%) of the total revenues (as determined in accordance with GAAP) of the Guarantor and its subsidiaries on a consolidated basis. As used in this definition “subsidiary” shall mean any Person whose financial statements are consolidated into the financial statements of the Guarantor in accordance with GAAP.

“Indebtedness” means, as to any Person, without duplication: (i) all obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or similar instruments; (ii) all obligations of such Person for the deferred purchase price of property or services (other than in respect of trade accounts payable arising in the ordinary course of business which are not past-due); (iii) all Capitalized Lease Obligations of such Person; (iv) all Indebtedness of others secured by a Lien on any properties, assets or revenues of such Person (other than stock, partnership interests or other equity interests of the Guarantor or any Subsidiary of the Guarantor in other entities) to the extent of the lesser of the value of the property subject to such Lien or the amount of such Indebtedness; (v) all Guarantees issued by such Person, *provided* that Long-Term Guarantees shall not be deemed “Indebtedness” for purposes of calculating the Guarantor’s compliance with the financial covenants set forth herein; (vi) all obligations of such Person, contingent or otherwise, in respect of any letters or credit (whether commercial or standby) or bankers’ acceptances, (vii) all Derivative Obligations of such Person (but excluding Derivative Obligations of Marketing Subsidiaries), *provided* that for purposes of determining the Guarantor’s compliance with the financial covenants set forth herein, only the Guarantor’s Derivative Obligations under Derivative Arrangements which must be marked-to-market in accordance with GAAP shall be included as Indebtedness of the Guarantor, and (viii) all obligations of such Person under synthetic (and similar type) lease arrangements, *provided* that for purposes of calculating such Person’s Indebtedness under such synthetic (or similar type) lease arrangements, such lease arrangement shall be treated as if it were a Capital Lease.

“Insufficiency” means, with respect to any Plan, the amount, if any, of its unfunded benefit liabilities, as defined in Section 4001(a)(18) of ERISA.

“Interest Expense Coverage Ratio” means, for any period of four consecutive quarters of the Guarantor ending with the most recently completed such fiscal quarter, the ratio of (A) Consolidated EBITDA to (B) Consolidated Interest Expense for such period.

“Law” shall mean any law (including, without limitation, any environmental Law), treaty, directive, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, direction, requirement or decision of or agreement with or by any governmental or governmental department, commission, board, court, authority, agency, official or officer having jurisdiction of the matter in question.

“Lease” means the Lease Agreement, dated as of July 20, 2001, between Wygen Funding, Limited Partnership, as Lessor, and Black Hills Wyoming, Inc. (f/k/a Black Hills Generation, Inc.), as Lessee, as the same may be amended, restated, modified or supplemented from time to time.

“Lessee” means Black Hills Wyoming, Inc. (f/k/a Black Hills Generation, Inc.), both in its capacity as Lessee under the Lease and in its capacity as Agent under the Agreement for Lease, and its successors and assigns.

“Lien” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, including, but not limited to, the security interest or lien arising from a mortgage, encumbrance, pledge, conditional sale, security agreement or trust receipt, or a lease, consignment or bailment for security purposes. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, Capital Lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes, and such retention of title shall constitute a “Lien.”

“Long-Term Guarantee” means (i) any Guarantee issued by the Guarantor or its Subsidiaries under which the holder or beneficiary of such Guarantee is not permitted under any circumstance or contingency to make demand or exercise any other remedies under such Guarantee prior to the termination of the Guarantor 2005 Credit Agreement, as extended from time to time in accordance with the terms thereof and (ii) any coal mining reclamation bonds or contingent indemnity or reimbursement obligations with respect to such reclamation bonds (so long as such reclamation bonds have not been called upon).

“Marketing Subsidiary” means each of Black Hills Energy Resources, Inc., a South Dakota corporation, and Enserco Energy, Inc., a South Dakota corporation, and their respective subsidiaries.

“Marketing Subsidiary Excluded Credit Facilities” means those certain credit facilities of the Marketing Subsidiaries described on Schedule I hereto, as such credit facilities are in effect on the date hereof, or as any such credit facility may be amended, restated or otherwise modified on terms and conditions and pursuant to documentation to accommodate an increase in the borrowings thereunder from \$200,000,000 to \$260,000,000, provided that such credit facilities shall cease to be Marketing Subsidiary Excluded Credit Facilities to the extent availability is otherwise increased, any substantive term thereof is materially modified, or such credit facility is

extended more than once in any fiscal year for a period of more than one year. Any replacement credit facility of a Marketing Subsidiary Excluded Credit Facility shall be deemed a Marketing Subsidiary Excluded Credit Facility only if such replacement credit facility contains terms substantially the same as the Marketing Subsidiary Excluded Credit Facility being replaced (including tenor but excluding the increase in borrowings otherwise permitted above) or is approved in writing by the Lessor and Assignee.

“Marketing Subsidiary Indebtedness Limit” means the sum of (i) the aggregate amount of credit availability (used or unused) under Marketing Subsidiary Excluded Credit Facilities as of the date hereof and (ii) \$25,000,000.

“Material Adverse Effect” means a material adverse effect on (i) the business, financial position or results of operations of the Guarantor or the Guarantor and its Subsidiaries taken as a whole, (ii) the ability of the Guarantor to perform its material obligations under this Guaranty or any other Operative Document, (iii) the validity or enforceability of the material obligations of the Guarantor under this Guaranty or any other Operative Document, (iv) the rights and remedies of the Lessor or any Assignee against the Guarantor; or (v) the timely payment of any amounts payable by the Guarantor hereunder.

“Material Subsidiaries” means BHP, Black Hills Energy, Inc., Wyodak Resources Development Corp., Black Hills Generation, Inc., Cheyenne, and any other Subsidiary of the Guarantor which is not either an Immaterial Subsidiary or a Project Finance Subsidiary.

“Moody’s” means Moody’s Investors Service, Inc.

“Moody’s Rating” means the rating assigned by Moody’s and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or if neither Moody’s nor any such successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United States of America as mutually agreed among the Lessor, the Assignee and the Guarantor). Any reference in this Guaranty to any specific rating is a reference to such rating as currently defined by Moody’s (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

“Multiemployer Plan” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Guarantor or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions, such plan being maintained pursuant to one or more collective bargaining agreements.

“Multiple Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, which (i) is maintained for employees of the Guarantor or an ERISA Affiliate and at least one Person other than the Guarantor and its ERISA Affiliates, or (ii) was so maintained and in respect of which the Guarantor or an ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

“Non-Recourse Indebtedness” means, without duplication, all Indebtedness of the Guarantor and its Consolidated Subsidiaries determined on a consolidated basis in accordance

with GAAP incurred in connection with project financings (including project financings of existing assets) as to which the holder of such Indebtedness has recourse solely against the assets of the Project Finance Subsidiary that incurs such Indebtedness and not against the Guarantor or a Consolidated Subsidiary of the Guarantor other than a Project Finance Subsidiary or any of their other assets (whether directly, through a Guarantee or otherwise), other than the pledge of the stock (or similar equity interest) of the Project Finance Subsidiary which incurred such Indebtedness. For purposes of clarification, any Indebtedness of a Project Finance Subsidiary which would otherwise constitute Non-Recourse Indebtedness but for the issuance by the Guarantor or a Consolidated Subsidiary of the Guarantor of a Guarantee or other document which provides recourse with respect to such Indebtedness, such Indebtedness shall for all purposes of this Guaranty be deemed Non-Recourse Indebtedness so long as (i) the Guarantor's or such Consolidated Subsidiary's obligations under such Guarantee or other document are treated for all purposes as Recourse Indebtedness hereunder, (ii) such Recourse Indebtedness of the Guarantor or such Consolidated Subsidiary is unsecured and is otherwise permitted by this Guaranty, and (iii) such Recourse Indebtedness of the Guarantor or such Consolidated Subsidiary does not in the aggregate exceed \$100,000,000 at any one time outstanding.

“Obligations” means Payment Obligations and Covenant Obligations, individually and collectively.

“Operative Documents” means this Guaranty, the Lease, the Agreement for Lease, the Ground Lease (as defined in the Lease), the Pledge Agreement, the Management Agreement, the Credit Agreement, the Security Documents and the Notes (each as defined in the Credit Agreement), the Shortfall Agreement (as defined in the Credit Agreement), the Fee Agreement, the Hannover LAPA and the Securities Collateral Account Agreement (each as defined in the Credit Agreement).

“Payment Obligations” means all rent, obligations, liabilities, indebtedness and other amounts of every kind arising out of the Operative Documents and payable by the Lessee, all amounts payable or reimbursable in respect to indemnities provided for in the Operative Documents in respect of a failure or refusal by the Lessee to make any such payment or reimbursement, howsoever created, arising or evidenced, voluntary or involuntary, whether direct or indirect, absolute or contingent, now or hereafter existing or owing to the Lessor.

“PBGC” means the Pension Benefit Guaranty Corporation or successor.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, limited liability company, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

“Permitted Liens” means, (a) Liens for taxes, assessments or governmental charges or levies to the extent not past due; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's liens and other similar Liens arising in the ordinary course of business securing obligations which are not overdue or which adequate reserves therefor, if any, shall have been established as required by GAAP and are being contested in good faith; (c) pledges or deposits to secure obligations under workmen's compensation laws or similar legislation or to secure public or statutory obligations of the Guarantor or any Subsidiary of the Guarantor; (d) purchase money Liens upon or in Property hereafter acquired by the Guarantor in

the ordinary course of business (consistent with present practices) to secure the purchase price of such Property or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of any such Property to be subject to such Liens, or Liens existing on any such Property at the time of acquisition, or extensions, renewals or replacements of any of the foregoing; (e) attachment, judgment or other similar Liens arising in connection with court proceedings, provided that the execution or other enforcement of such Liens is effectively stayed, the claims secured thereby are being actively contested in good faith by appropriate proceedings and the payment of which is covered in full (subject to customary deductible amounts) by insurance maintained with responsible insurance companies; (f) Liens securing Non-Recourse Indebtedness of the Guarantor; and (g) Liens existing on the date hereof and listed on Schedule 7.9 to the Guarantor 2005 Credit Agreement.

“Plan” means a Multiemployer Plan or a Multiple Employer Plan.

“Pledge Agreement” means the pledge agreement, dated as of July 20, 2001, by and between the Lessee, as pledgor, and Lessor, as pledgee, as the same may be amended, restated, modified, or supplemented from time to time in accordance with the terms thereof.

“Potential Default” means any event that, with the giving of notice, lapse of time or both would constitute an Event of Default.

“Project Finance Subsidiary” means any Subsidiary of the Guarantor as to which the creditors and other holders of Indebtedness of such Subsidiary have recourse solely against the assets of such Subsidiary and not against the Guarantor or any other Subsidiary of the Guarantor or any of their other assets (whether directly, through a Guarantee or otherwise) other than (i) pursuant to a Guarantee permitted under the Guarantor 2005 Credit Agreement and (ii) the stock of such special purpose Subsidiary (or similar equity interest).

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Recourse Indebtedness” means, without duplication, all Indebtedness of the Guarantor and its Consolidated Subsidiaries determined on a consolidated basis in accordance with GAAP other than Non-Recourse Indebtedness.

“Recourse Leverage Ratio” means, as of any time the same is to be determined, the ratio of the amount of (A) Recourse Indebtedness outstanding at such time (provided that for purposes of clause (A) of this definition, to the extent otherwise included, Indebtedness of Marketing Subsidiaries in an aggregate amount not to exceed the Marketing Subsidiary Indebtedness Limit incurred under Marketing Subsidiary Excluded Credit Facilities shall not be deemed to be Recourse Indebtedness) to (B) the amount of Capital at such time.

“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc.

“S&P Rating” means the rating assigned by S&P and any successor thereto that is a nationally recognized rating agency to the outstanding senior unsecured non-credit enhanced long-term indebtedness of a Person (or, if neither such division nor any successor shall be in the business of rating long-term indebtedness, a nationally recognized rating agency in the United

States as mutually agreed among the Lessor, the Assignee and the Guarantor). Any reference in this Guaranty to any specific rating is a reference to such rating as currently defined by S&P's (or such a successor) and shall be deemed to refer to the equivalent rating if such rating system changes.

“SEC” means the Securities and Exchange Commission.

“Senior Financial Officer” means the Chief Financial Officer, Treasurer or Controller of the Guarantor.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, which (i) is maintained for employees of the Guarantor or an ERISA Affiliate and no Person other than the Guarantor and its ERISA Affiliate, or (ii) was so maintained and in respect of which the Guarantor or an ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

“Subsidiary” means, with respect to the Guarantor, any corporation or other entity (i) which is consolidated into the financial statements of such Guarantor in accordance with GAAP or (ii) of which more than fifty (50%) of the outstanding stock or comparable equity interests having ordinary voting power for the election of the Board of Directors of such corporation or similar governing body in the case of a non-corporation (irrespective of whether or not, at the time, stock or other equity interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned by such Guarantor or by one or more of its Subsidiaries.

“Triggering Event” means the Guarantor's S&P Rating ceases to be at least BBB- or its Moody's Rating ceases to be at least Baa3.

“Voting Stock” of any Person means capital stock of any class or classes or other equity interests (however designated) having ordinary voting power for the election of directors or similar governing body of such Person.

“Welfare Plan” means a “welfare plan”, as defined in Section 3(l) of ERISA.

“Withdrawal Liability” shall have the meaning given such term under Part I of Subtitle E of Title IV of ERISA.

## CERTIFICATION

I, David R. Emery, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2006

/s/ David R. Emery  
Chairman, President and  
Chief Executive Officer

## CERTIFICATION

I, Mark T. Thies, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Black Hills Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2006

/s/ Mark T. Thies  
Executive Vice President and  
Chief Financial Officer



CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David R. Emery, Chairman, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2006

/s/ David R. Emery \_\_\_\_\_  
David R. Emery  
Chairman, President and  
Chief Executive Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Black Hills Corporation (the "Company") on Form 10-Q for the period ended June 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark T. Thies, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13 (a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 9, 2006

/s/ Mark T. Thies  
Mark T. Thies  
Executive Vice President and  
Chief Financial Officer